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No._____

IN THE

Supreme Court of the United States

Edward Y. Politi

Petitioner,

v.

County of Los Angeles

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California Second Appellate District, Division Three

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Court of Appeal of California and the County of Los Angeles Superior Court have held that the Petitioner as lessor of his improved private property for public and governmental use is not entitled to compensation from the County-Respondent for certain alleged breaches of the lease-contract following a Northridge earthquake aftershock. The holdings of the California courts preceded the newly discovered evidence, which, together with California laws, the U.S. Constitution Amendment Articles V and XIV Section 1, raises substantial federal questions for this Court to review pursuant to 28 U.S.C.A. Section 1257(a) such as the plaintiff's deprivation of property without due process of law (Amend. Art. XIV Section 1) and the disallowance of the taking of private property for public use without just compensation (Amend. Art. V), all done by the County of Los Angeles, a government entity, in their administration of the lease-contract following the Northridge earthquake aftershock.

1. Whether newly discovered evidence shows reasonable ambiguity between the interpretations of the trial and appeal courts in accord with California Civil Code Section 1654 and/or non-ambiguity in accord with California Civil Code section 1641 in the reasonable interpretation of paragraphs 19C and 16 of the defendant-drafted lease-contract which would determine, in either case, that the County-lessee owned the TENANT IMPROVEMENTS (TRADE FIXTURES) at their expressed termination of the lease-contract and that the County was obligated to remove the TENANT IMPROVEMENTS (TRADE FIXTURES) upon the lessor's request at termination in order to give vacant possession of the premises to the lessor?

2. Whether newly discovered evidence shows that the County-lessee, by letter to the plaintiff-lessor on April 5, 1994, waived its jurisdiction in favor of the City as to the safety of the leased premises for habitation and usage, afterwhich, the City certified that the premises were safe, habitable and usable on April 8, 1994, following which the County committed acts of fraud under the contract's paragraph 7 (DAMAGE OR

DESTRUCTION)(Exhibit A) which included misrepresentation, concealment and promises without intent to perform them, all for the purpose of abating the rent for April and May 1994,and that, furthermore, the County admitted to routinely using the common areas of the leased premises for their vans and personnel during April and May 1994 to meet and transport clients to other facilities and that, under the law, use of the common areas is considered as use of the premises thereby additionally justifying a holding of waiver and estoppel and that the rent for April and May should not have been abated by the trial court?

3. Whether newly discovered evidence shows that the lease-contract was renewed by the County in August 1986 in accordance with paragraph 2B (TERM: Option To Renew)(Exhibit A) and pursuant to California Civil Code 3289 (b) and the trial court's STATEMENT OF DECISION 5 (Appendix B), that ten percent, not seven percent, interest on the damage award is correct?

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits, the Court of Appeal of the State of California, appears at Appendix A to the petition and is unpublished.

The opinion of the Superior Court of the State of California for the County of Los Angeles appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the California Court of Appeal decided this case was August 4, 2000. A copy of that decision appears at Appendix A.

A timely Petition For Rehearing was thereafter denied on the following date: August 23, 2000, and a copy of the order denying the rehearing appears at Appendix C.

A timely Petition For Review was thereafter denied on the following date: November 15, 2000, and a copy of the order denying review appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part, that "no person ..... shall be deprived of ..... property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. Amend. Art. V.

The Fourteenth Amendment, Section 1, to the Constitution of the United Sates provides in pertinent part, that "..... nor shall any state deprive any person of ..... property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. Amend. Art. XIV, Sec. 1.

28 United States Code Section 1257(a) State courts certiorari provides:

> (a) Final Judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

This petition from the plaintiff seeks to remedy the ability of a California County government entity (as lessee) from the widespread and systemic infringement upon and dilution of the right of a person (as lessor) not to be deprived of his property without due process of law and equal protection under the law, nor shall his private property be taken for public use without just compensation as was done in this case from April, 1994 through April 1998 by the County of Los Angeles in their administration of lease-Contract Number 44530. These rights are preeminent constitutional rights in this nation pursuant to Amendment Articles V and XIV Section 1 (Due Process and Equal Protection) and they are supportive and preservative of all rights which implicates uniquely important national interests. California Civil Code Sections 1951.2 and 1951.4 should also be considered as a lessor's remedy as well as precedential case law.

The County, in its defendant's exhibit (DEX104), a letter to the plaintiff dated July 6, 1992 stated:

> "As a public entity, the County is bound by Federal, State and County statutes as well as Board of Supervisors policy. Neither the County nor the people it deals with can be in violation of these statutes and policies."

However, the plaintiff has alleged that in the present case, the County has violated Federal, State, County and City laws and breached the lease-contract No. 44530 (EXA and B) according to the California courts (Appendices A and B) and in tangled ways not yet realized by the California and Federal courts which the petitioner now seeks to further untangle.

The unequal, changing, and standardless selective government administration and adjudication of government-entity lease-contract disputes in California is a patently unfair process that is having an impact on its citizens and that cries out for correction by the Court. Petitioner has no choice but to seek this Court's intervention.

The present action has its origin in a series of breaches of a written contract (EXA,B)(RT318:27-28,319:1-4) admittedly drafted by the defendant County of Los Angeles through its legal counsel and administrative employees (judicial notice taken RT318:27-28,319:1-4), as they sought to avoid paying the rent and other proper amount of damages to the plaintiff Edward Politi, following an earthquake aftershock on March 20, 1994. Prior to the breaches, the lease contract was for two 3-year terms from 1983 to 1989 afterwhich it went to a month-to-month holdover for the 6,000

square foot facility . (See paragraph 2B. OPTION TO RENEW of the lease-contract EXA).

Plaintiff suffered monetary damages as a direct result of the defendant's breaches of the contract that continued from March 21, 1994 through April 31, 1998, a period exceeding four years. The alleged breaches included continued possession by the defendant as the ultimate issue, because of the defendant's refusal to remove from the leased premises, their owned alterations and improvements that were affixed to the premises, followed by restoration, at the request of the plaintiff after their notice of termination. Plaintiff testified to a cost of $78,470 to restore the premises (RT11:17-20,60:3-14,290-297)(Exhibit 41).

Additional damages were suffered by the plaintiff on the sale of the property in May 1998 due to a fifty percent vacancy factor attributed to inability to rent the defendant-lessee vacated premises, but it was close to trial and the judge would not allow a motion for leave to file an amendment to the complaint as to alleged fraud committed by the County and would not award damages for the defendant's refusal to remove the Tenant Improvements.

The trial court ruled in its STATEMENT OF DECISION 4 (Appendix B, page 3, lines 10-22) that "the plaintiff had an obligation to mitigate his damages by complying with Civil Code section 1980 et seq which he did not. Therefore, his claim for continued possession by the County is without merit." (CT364:10-22). Plaintiff-appellant did establish and the appeal court agreed that the trial court's application of the law was erroneous on this issue. Nevertheless, the appeal court ruled against the plaintiff by interpreting paragraph 19C(see page 16) to indicate that the County did not exercise the option to "prepay" the amortization of the loan to the lessor and that, as a result, title to the tenant improvements did not vest in the lessee, but did vest in the lessor.

The plaintiff suffered monetary damages as a direct result of this breach by defendant's continued constructive possession of the premises in that the plaintiff had reasonably determined that it would be difficult to lease the premises with all the County's installed alterations and improvements, to any other new tenant, especially in that particular location of the City. After the defendant's decision not to remove the alterations and improvements (EX33) in June 1994, final election or decision to remove the alterations and improvements was lawfully in the hands of the plaintiff. The plaintiff had interpreted paragraph 19C of the admitted County-drafted lease-contract as stating that the lessee

owned the alterations and improvements and that the lessee was entitled to remove them at or before expiration or prior termination of the lease which legally obligated the defendant to be responsible to remove their installed personal property and restore the premises (EX41) to the condition when first rented on May 31, 1983, when requested by the lessor at termination. Exhibit A paragraph 19.C., Exhibit B, County Drawing No. 45-82 (CT41) shows the defendant's "improvement walls" as internal solid lines and the "restoration walls" as internal broken lines, all of which are not integral structures and readily removable.

I. The Underlying Litigation As To Whether The TENANT IMPROVEMENTS (TRADE FIXTURES) Were Owned By The Defendant-Lessee And Their Obligation To Remove Them And Restore The Premises At Termination Of The Lease.

Pursuant to this Court's Rule 14.1(i), QUESTION 1 arose from the STATEMENT OF DECISION 4 (Appendix B, page 3, lines 10-22) regarding the TENANT IMPROVEMENTS issue wherein the trial court opinion stated:

> "4. The property and improvements issue
>
> Plaintiff claims under various legal theories that the improvements to the property became the personal property of the County and the County should have removed them. He then contends that as they did not, that constitutes continued possession of the property by the County. Even assuming for the sake of argument that it did become the personal property of the County, it was clearly abandoned at the time of the termination or at the latest in September 1994 when the County took other items from the property. The plaintiff had an obligation to mitigate his damages by complying with Civil Code Section 1980 et seq which he did not. Therefore, his claim for continued possession by the County is without merit."

From the trial court's assumption "for the sake of argument", it can be inferred that the trial court reasonably interpreted paragraph 19C of the lease contract and conceded that the TENANT IMPROVEMENTS became "the personal property of the County" and that "it was clearly abandoned at the time of the termination or at the latest in September 1994 when the County took other items from the property."

Following the trial, on November 20, 1998, plaintiff filed into the trial court, a MOTION THAT COURT'S JUDGEMENT BE

SET ASIDE AND VACATED IN PART AND THAT THE COURT'S STATEMENT OF DECISION 4 BE AMENDED AND CORRECTED (portion of court's charge and exception thereto), claiming that the County owned the TENANT IMPROVEMENTS pursuant to paragraph 19C of the lease-contract, afterwhich the motion was denied (ruling on exception) by the trial court.

The assignment of errors came about when the plaintiff objected to the trial court's application of California Civil Code Section 1980 et seq in the disposition of lessee's personal property (TENANT IMPROVEMENTS) remaining on the premises at termination, was in error, pursuant to California Civil Code Section 1981(a) which provides that CC1980 et seq is an optional procedure and a lessor was not obligated to comply with it. Furthermore, the plaintiff elected that California Civil Code Sections 1951.2 and 1951.4 as a proper lessor's remedy and that he had satisfied the mitigation requirements.

The assignment of errors regarding the tenant improvements were errors in law by the trial court in its application of CC1980 et seq instead of CC1951.2 and 1951.4. The appeal court apparently agreed with the plaintiff that the trial court decision was an error in law on the application of CC1980 et seq, an optional statute or procedure for mitigation of damages. Plaintiff asserts that the damages caused by the non-removal of TENANT IMPROVEMENTS resulted in the plaintiff being deprived of his rentable property by the County and that it was constructively taken for public use without just compensation of rent in violation of the U.S. Constitution Amendment Article V as well as Amendment Article XIV Section 1 as to Due Process of law and Equal Protection Of The Laws.

A. Newly Discovered Evidence Of Ambiguity In The Reasonable Interpretation Of The Contract Between The California Courts As To Whether The Lessee Or The Lessor Owned The TENANT IMPROVEMENTS.

Plaintiff-petitioner now claims newly discovered evidence of ambiguity in the interpretation of paragraph 19C as to who owned the TENANT IMPROVEMENTS when on August 4, 2000 the California Court of Appeal held that the plaintiff-lessor owned them. (Appendix A, DISCUSSION 1.D. page 9, lines 4 and 5).

In deference to the appeal court's decision (Appendix A) there is newly discovered evidence as of August 4, 2000, for the plaintiff to infer that paragraph 19C of the defendant-drafted lease-contract

has reasonably been interpreted and construed as ambiguous between the final decisions of the trial court (Appendix B) and the appeal court (Appendix A) pursuant to California Civil Code Section 1654 which states:

> "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

B. Newly Discovered Evidence Of Non-Ambiguity In The Reasonable Interpretation Of The Contract's Paragraph 19C And 16 By The Plaintiff And The Defendant As To Who Owned The TENANT IMPROVEMENTS.

1. The plaintiff has newly discovered evidence in the reading and understanding of paragraph 16 (see page 6) to construe paragraph 19C as not being ambiguous, when 19C and 16 are taken together pursuant to California Civil Code Section 1641 which states:

> "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

2. In the interpretation of paragraph 19C of the lease-contract, the plaintiff has further newly discovered evidence in the reading and understanding of paragraph 19C as not being ambiguous pursuant to California Civil Code Section 1644 which states:

> "The words of a contract are to be understood in their ordinary and popular sense, rather that according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed."

Plaintiff has newly discovered that in a letter from the County to the plaintiff dated August 17, 1992 (DEX106), it was stated:

> "Paragraph 19 of our current lease states, among other things, that the County has the right, not the obligation to remove and retain said improvements."

It is strange that the County would claim a right to remove the tenant improvements, unless the County unambiguously believed that title to the TENANT IMPROVEMENTS had vested in the County!

Also, in a letter dated November 8, 1994 (EX33), the County stated:

> "the lease is drafted in such a way as to grant the County an option to remove the improvements if the County elects to

do so. The County is not required to remove the improvements unless we elect to remove same. The County elects not to remove the improvements."

How can the County have an option to remove the improvements by election unless the County interpreted and believed that title to the improvements had vested in the County?

The appeal court's opinion that the lessor owned the TENANT IMPROVEMENTS flies in the face of the above two letters, but that court and the plaintiff had not yet discovered these letters as to their application in this case until the appeal court opinion was filed on August 4, 2000, stating that the plaintiff owned the improvements.

II. The Underlying Litigation As To The Defendant's Obligation To Pay Rent For April And May 1994 And Their "Fraud Under Contract" To Avoid Payment.

Pursuant to this Court's Rule 14.1(i), QUESTION 2 arose from the September 9, 1998 STATEMENT OF DECISION 1, page 2, lines 16-22 (Appendix B) where the trial court opinion, pursuant to paragraph 7 (DAMAGE OR DESTRUCTION) of the lease-contract, abated the rent by deciding:

"Plaintiff contends that the court should not have excluded periods prior to the notice of termination. However, paragraph 7 of the lease specifically provides that the rent is abated during the period of repair for that portion of the premises that could not be used. As the property was not able to be used until such time as the City and County certified it as habitable again, the plaintiff is not entitled to rents for that period."

On November 20, 1998 plaintiff filed into the trial court a MOTION THAT COURT'S JUDGEMENT BE SET ASIDE AND VACATED IN PART AND THAT THE COURT'S STATEMENT OF DECISION 1 BE AMENDED AND CORRECTED (portion of court's charge and exception thereto) claiming specifically among others, that the trial court should not have abated the rents for April and May 1994 in the amount of $15,738, but the trial court denied the motion (ruling on exception).

The assignment of errors came about when the plaintiff complained that there were rents payable to the plaintiff for the months of April and May 1994 since there was substantial documentary evidence that had been presented and accepted by the judge at trial of the County's commission of at least seven counts of fraud under paragraph 7 of the contract (Exhibit A)

The assignment of errors in common law regarding the County's undisputed administrative "fraud under contract" included unlawful violation of City and County of Los Angeles statutes (see page 11) regarding territorial jurisdiction, safety jurisdiction issues, County usage of the premises, County specified instructions to the plaintiff to do aftershock repairs, misrepresentations, concealment and promises to the plaintiff without intent to perform them. (RT297-304)(EX6B,7,9A,12A,12B,13,20).

Following the plaintiff's trial testimony on the County's undisputed administrative "fraud under contract" (RT297-304), the trial judge noticed during the trial that "I think a better word than "fraud" would be "administrative estoppel".(RT303:6-7) and the plaintiff countered with " You did mention promissory estoppel." (RT303:8-9). Near the end of the plaintiff's argument the judge characterized the issue of the County's jurisdiction from March to June 1994 as "the right of a lessee to make its own decision pursuant to the terms of the lease in paragraph seven." (RT327:3-16). At the end of argument the judge would not allow the plaintiff's claim of fraud (RT329:15-19).

Plaintiff asserts that the administrative and engineering acts of the County were unlawful and damaging to the plaintiff, but the trial court erred in the law by mainly excusing the County's unlawful acts against the plaintiff and allowing abatement of the rent for the months of April and May 1994 and refused to recognize that the County, as a government entity, had committed substantial "fraud under contract" against the plaintiff. The plaintiff erred in not specifically bringing up the fraud issue in his opening brief to the appeal court since the trial court refused to recognize it during the trial or even through the plaintiff's prejudgement objections and post-judgement motions. However, the plaintiff did bring it up as "other damages" in his appeal court opening brief and the issues of fraud and usage of the premises more specifically in his appeal court reply brief, oral argument and a rehearing petition, but the appeal court denied hearing it at all since it was not specifically in the opening brief.

The assignment of error regarding the abatement of two months of rent in April and May 1994 was an error in substantial fact and common law by the trial court which deprived the plaintiff of his rentable property by the County in violation of U.S. Constitution Amendment Article V and that it was constructively taken for public use without just compensation of rent in violation of Amendment Article XIV Section 1, as well as due process of the

law in Article V and XIV Section 1.

A. Newly Discovered Evidence Of Defendant's Waiver Of Jurisdiction And Actual Usage Of The Premises Followed By And Tied To Defendant's Commitment Of Fraud Under Paragraph 7 Of The Lease-Contract To Avoid Paying Rent For April And May 1994.

QUESTION PRESENTED 2 is concerned with the plaintiff's alleged claims that the defendant was fraudulent in their acts of administration with regard to the lease-contract's paragraph 7. (DAMAGE OR DESTRUCTION)(CT3). The trial court called it "administrative estoppel."(RT302:28,303:1-11), but refused to rule on the issue of the County's fraudulent administrative behavior under the contract and the resultant monetary damage caused to the plaintiff. (RT325:18-28,326,327:1-16,329:15-19).

Following the California Court of Appeal's decision of August 4, 2000 (Appendix B) there is newly discovered evidence relative to the abatement of rent for the two months of April and May 1994 in the Superior Court's STATEMENT OF DECISION 1 dated September 9, 1998 as follows:

FACT 1. As to the County's right to certify the premises as being habitable, there was newly discovered evidence that the County waived it's "jurisdiction" and "sole discretion" in favor of the City of Los Angeles on April 4 and 5, 1994 by phone and by letter where defendant promised "The County is prepared to accept the City's determination on this matter." However, the defendant did not perform this promise. (EX9A,12A,12B,13,20)(EXA,par.7 DAMAGE OR DESTRUCTION).(RT27:28,29:1-8,34:11-28,35:1-8,297:9-27,298:1-10).(See County of Los Angeles Uniform Building Code, Title 26, section 103 Administrative Scope and Los Angeles Municipal Building Code Chapter IX, Article 1, Division 1, Section 91.101.4. Administration Scope).

FACT 2. As to the use of the premises, plaintiff claims newly discovered evidence,of trial testimony by the County Administrator, Mr. Kohl, that the County routinely used the common areas of the premises after March 28, 1994, during April and May 1994 for client meetings and transportation, as well as parking for their vans. (RT246:14-23,273:5-15).

On March 28, 1994 defendant's structural engineer, Mr. Donald Lee, posted a "Red Tag" (UNSAFE SIGN)(EX7)

on the glass front entry door of the Mental Health Clinic with a hand-written comment "This order applies to use by L.A. County Employees". The employees of the defendant were ordered to dehabitate the premises on this day, but they continued the "use" of the premises by routinely using the common areas for van parking and client transportation,. (RT246:14-28,247:1-26). On direct examination by the defendant's counsel the defendant admitted that the common areas of the facility were also being routinely used by the defendant to park, meet and transfer clients after the aftershock of March 20, 1994 from March 28, 1994 through May 1994. (RT273:5-15). According to property law, the common areas are considered as part of the leased premises and shows by defendant's admission, additional routine use of the premises by the defendant after the aftershock, during April and May 1994.

FACT 3. The City assumed "jurisdiction" and inspected the premises on April 8, 1994 with two structural engineers from the Army Corps of Engineers at Vicksburg, Mississippi, Mr. James Ray and Mr. James Davis, who, thereafter, posted a "Green Tag" or "Safe Sign" next to the County posted "Red Tag" or "Unsafe Sign" that was previously posted on March 28, 1994. (EX7)(See L.A. Municipal Building Code, Section 91.101.4 supra). On April 8, 1994, the City's structural engineers also generated a detailed inspection report that certified that the premises were safe, habitable and useable. (EX12A,12B).

FACT 4. The County refused to remove the posted "Red Tag" nor to pay rent for April and May 1994. After case discovery, followed by extensive research of the law, Appellant alleged that there was actionable and mostly documentary, evidence of fraud under the lease-contract, committed by the respondent in the administration of paragraph 7.C. under (DAMAGE OR DESTRUCTION) which included negligent or intentional misrepresentations, (EX6B,7,9A,12A,12B,13,20) concealments (EX6B) and promises without the intent to perform them. (EX9A,13)(RT297:4 through 303:15)(CT211-232,371-378). The facts on this issue of abatement of the rent

during April and May 1994 are shown in the following clerk's and reporter's transcripts and were undisputed during the trial. (CT352)(RT9-12,36-38,297-302,329).

III. The Underlying Litigation As To Whether The Lease-Contract Was Renewed In August 1986 Allowing For A Ten Percent Interest Rate On The Trial Court's Damage Award To The Plaintiff.

Pursuant to the Court's Rule 14.1(i), QUESTION 3 arose from the trial court's September 9, 1998 STATEMENT OF DECISION 5, page 3, lines 23-28, page 4, lines 1-10 (Appendix B), where the issue of interest in the amount specified to September 1, 1998 was determined to be a simple rate of ten percent per annum pursuant to California Civil Code 3289 (b). However, on August 4, 2000 the Court of Appeal overturned the trial court's decision and lowered the interest rate to seven percent pursuant to the California Constitution, Article 15, Section 1. The appeal court opinion of August 4, 2000 was based on the incomplete evidence presented that no new lease or rental agreement was ever executed and that, therefore, they did not find a RENEWAL of the lease, but rather, a HOLDOVER of the lease. (Appendix A, page 18, 7 lines from the bottom to the end).

Following the appeal court's decision to reverse the trial courts award to the plaintiff of ten percent interest (Appendix B) and to instead award seven percent interest (Appendix A) pursuant to California Civil Code 3289(b), the plaintiff is now seeking to vacate the appeal court's opinion on this issue. The plaintiff objected to the appeal court's opinion in its Petition For Rehearing to that court filed August 23, 2000 (Appendix C)(portion of court's charge and exception thereto), which was denied on August 28, 2000 (ruling on exception). The assignment of error on the law pursuant to C.C.3289(b) came about from the substantial evidence that the lease was renewed pursuant to paragraph 2.B. (TERM: Option To Renew) due to the defendant-admitted fact that the rent was reduced by $2,745 per month in accordance with the exercise of the option in paragraph 19C to lower the rent on amortization of the plaintiff's loan to the County for the TENANT IMPROVEMENTS. (RT242:18-26) Without the County's exercise of their option to renew the lease, the plaintiff, as lessor, was not obligated to reduce the rent by $2,745 per month. The renewal of the lease on August 1986 validates an award of ten percent interest on the damages pursuant to the law of C.C.3289(b) and the substantive facts. Plaintiff asserts that he has been deprived of due process on the

issue of the interest to be awarded in this case, which would violate the U.S. Constitution Amendment Articles V and XIV Section 1.

A. Newly Discovered Evidence That The Lease-Contract Was Renewed Pursuant To Paragraph 2B (OPTION TO RENEW) Of The Lease-Contract And Should Allow For A Ten Percent Interest Rate On The Award Of Damages To The Plaintiff Pursuant To California Civil Code Section 3289 (b) As Originally Decided By The Trial Court.

While preparing this petition to the Supreme Court of the United States and in reviewing the reporter's transcript (RT) of the trial proceedings, the plaintiff has newly discovered evidence since the appeal court decision of August 4, 2000 (Appendix A) in the form of sworn testimony that was direct evidence, that the lease was renewed in accordance with paragraph 2B TERM: (Options To Renew) for a period of three years from August 1986 to August 1989. (RT11:6-9,95:19-28, 96,97:1-25). Additional evidence that the lease was renewed in August 1986 derives from the fact that the rent was mandatorily reduced to account for the amortization of the tenant improvements after the first 3-year term of the lease expired as in paragraph 19C. If the option to renew had not been exercised, then the ensuing monthly rent would not have been automatically reduced by $2745 per month and would still be owing in accordance with the lease contract. (RT242:18-28,243:1-2,296:10-28,297:1-3).

REASONS FOR GRANTING THE PETITION

There are not many issues that are more important than those presented in this case. Up for consideration is the lawful resolution of a contractual lease dispute between a private individual person, as lessor, and the County of Los Angeles, a government entity as lessee. This Court has often recognized the American public's essential right under our U.S. Constitution Amendment Articles V and XIV Section 1, to not be deprived of property without due process of law, nor shall private property be taken for public use without just compensation under Article V, nor to deny any person within its jurisdiction the equal protection of the laws under Article XIV Section 1.

I. Review Is Warranted In This Case Because Newly Discovered Evidence Shows That The California Superior Court And The Court Of Appeal Disregarded California Law and The Constitution Of The United States Governing A Dispute Over The Reasonable Interpretation Of The Lessee-Drafted Lease-Contract's Paragraphs 19C

And 16 As To The Ownership Of The TENANT IMPROVEMENTS (TRADE FIXTURES) And The Obligation To Remove Them And Restore The Premises At Termination So As Not To Deny Vacant Possession To The Lessor And In Consideration Of His Rights As Lessor, When He Is Deprived Of His Private Property By A Government Entity, As Lessee, That Constructively Takes His Property For Public Use Without Just Compensation.

A. As Newly Discovered Evidence, Paragraph 19C Of The Lease-Contract Was Reasonably Interpreted Ambiguously Between The Trial Court And The Court Of Appeal As To Whether The Lessee Or The Lessor Owned The TENANT IMPROVEMENTS And Pursuant To California Civil Code Section 1654 This Court Should Hold That The County Owned Them Since The Lessee Admitted Drafting The Lease-Contract And That The Lessor's Remedy Lies In California Civil Code Sections 1951.2 And 1951.4.

California Civil Code Section 1654 states:

> "In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

The facts showed that the County admittedly drafted the lease-contract and that C.C.C. 1654 indicates that in cases of uncertainty in the reasonable interpretation of a contract provision as between the trial and appeal courts (Appendices A and B) and between the parties to the dispute, the language of this lease-contract should be interpreted most strongly against the County.

Where lease was prepared by lessee, any ambiguity therein was properly resolved against him. Baird v. Lindblad (1946) 75 C.A. 2d 202, McClintick v. Leonards 103 C.A. 768.

Terms of lease, which was drawn by lessee's attorney, were required to be interpreted most strongly against the lessee. Textile v. Coleman (1954) 122 C.A. 2d 746.

Reasonableness, equity, fairness, the substantive facts and the law calls out to this Court to review and modify the lower court's opinion on this QUESTION ONE PRESENTED.

B. As Newly Discovered Evidence, Paragraph 19C And 16 Of The Lease-Contract Can Be Taken Together Pursuant To California Civil Code Section 1641 To Reach A Reasonable, Non-Ambiguous Interpretation

That The County-Lessee Owned The TENANT IMPROVEMENTS At Their Expressed Termination Of The Lease-Contract And That The Lessor's Remedy Lies In California Civil Code Sections 1951.2 And 1951.4

1. Paragraph 19C (TENANT IMPROVEMENTS) of the lease-contract is repeated here as follows:

"Lessee shall have the continuing option to pay off any unamortized balance of Lessor's financed cost at any time during the leased term without the payment of any penalty other that the penalty, if any, imposed upon the Lessor by the lender. In the event lessee exercises this option, the monthly rent shall thereafter be reduced by the sum of THIRTY FOUR AND 18/100 dollars ($34.18) per ONE THOUSAND DOLLARS ($1,000) of principal amount so paid as a lump sum. In the event Lessee exercises this option, then title to the alterations and improvements shall vest in Lessee; Lessee thereafter at the expiration or prior termination of this lease shall be entitled to remove any or all of such alterations and improvements."

Part of paragraph 16 (CONDEMNATION) of the lease-contract states specifically:

"Lessee shall be entitled to that portion of the award, if any, attributable to Lessee's trade fixtures and improvements and for the bonus value of Lessee's leasehold. "Trade Fixtures" are agreed to include any tenant improvements installed at the Lessee's request to the extent that Lessee has reimbursed Lessor for such tenant improvements in a lump sum or through amortization included in the rent payments."

California Civil Code Section 1641 states:

"The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."

Lease must be considered in its entirety to ascertain intention of parties. Kurihara v. City Market of Los Angeles (1928) 90 C.A. 374. Lease provision was properly construed by reference to other provisions. City of Stockton v. Stockton Plaza Corp. (1968) 261

C.A. 2d 639.

It should be patently clear that paragraph 16 of the lease-contract removes any consideration of a "condition precedent" on which the final decision of the Court of Appeal relies that the tenant improvements belong to the plaintiff-lessor. For example, paragraph 16 says: "Trade Fixtures" are agreed to include any tenant improvements installed at the Lessee's request to the extent that Lessee has reimbursed Lessor for such tenant improvements in a lump sum or through amortization included in the rent payments." (underlined emphasis added) Therefore, even the last payment does not exclude the tenant improvements from being considered as "Lessee's trade fixtures" as stated in paragraph 16. It is a doctrine of law that "trade fixtures" are the property of the lessee in the practice of their trade. The clause indicating reimbursement "in a lump sum or through amortization" indicated that to be the "continuing option" described in paragraph 19C and eliminates any consideration in the wording of the contract of a "condition precedent" as discussed by the Court of Appeal (Appendix A, top of page 7 and note 4).

The expression "Lessee's trade fixtures" in paragraph 16 denotes ownership of the trade fixtures by the Lessee which further reinforces paragraph 19C, wherein "title to the alterations and improvements shall vest in Lessee."

Paragraph 19C says that "Lessee shall have the continuing option to pay off any unamortized balance of Lessor's financed cost at any time during the leased term....." Therefore, the option dealt with payment terms and did not exclude a final payment as part of the option. Further proof that the option was exercised lies in the fact that the monthly rent was thereafter reduced by $2,745 per month after the final amortization of the loan amount. If the Court of Appeal's interpretation was a fair one in that no "lump sum" payment was made as a "condition precedent", then the rent need not have been reduced. Additionally, the dictionary defines "lump-sum" as "a single sum". (Webster's Third New International Dictionary) Certainly any last payment would be a "single sum" payment, even the 36 th payment. Therefore, reduction of the rent after the 36th payment was the event that proved that the Lessee and Lessor had agreed that the option was exercised. The $2,745 per month reduction could be looked at as the "lump sum" reduction of the rent, not the "lump sum" prepayment.

Furthermore, the following sentence in 19C says:

"In the event Lessee exercises this option, then title to the

alterations and improvements shall vest in Lessee; Lessee thereafter at the expiration or prior termination of this lease shall be entitled to remove any or all of such alterations and improvements."

The event of the lowering of the rent did occur which meant that the option was exercised and title to the tenant improvements vested in the Lessee and that the Lessee's title (or ownership) gave the County the right to remove any or all of the tenant improvements, but the fact of ownership does not give a right not to remove the tenant improvements if the Lessor of the premises requests the tenant to remove his tenant improvements, trade fixtures or personal property from the premises at expiration or termination of the lease in order to receive vacant possession of the premises.

2. In the interpretation of paragraph 19C of the lease-contract, the plaintiff has further newly discovered evidence in the reading and understanding of paragraph 19C as not being ambiguous pursuant to California Civil Code Section 1644 which states:

"The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

In construing contracts, words are to be taken in their ordinary meaning. John Breuner Co. v. Western Union Telegraph Co. (1930) 108 C.A. 243. Words of contract are to be understood in their ordinary and popular sense, rather than their strict legal meaning unless used by parties in a technical sense. Berman v. Dean Witter & Co., Inc. (1975) 44 C.A. 3d 1. Court is without power, under guise of construction, to depart from plain meaning of words contained in writing and insert terms or limitations not found therein. Rosen v. E.C. Losch, Inc. (1965) 234 C.A. 2d 324.

The word "choice" is a synonym for the word "option". (Webster's Third New International Dictionary) If the word "choice" is substituted for the word "option" in paragraph 19C, it will read:

"Lessee shall have the continuing choice to pay off any unamortized balance of Lessor's financed cost ---- at any time during the leased term ---- In the event Lessee exercises this choice, then title to the alterations and improvements shall vest in lessee; ----"

Black's Law Dictionary (5th Edition, 1979) gives a definition

for "option" as:

"Right of election to exercise a privilege."

Plaintiff interpreted that the County could elect "to pay or prepay" as the privilege. Plaintiff asserts that the option to pay or prepay was not distinguished sufficiently to prove that the prepayment was applicable and the last payment was inapplicable.

The continuing "choice" or "option" was to pay off any unamortized balance of Lessor's financed cost at any time during the leased term ------.

Plaintiff interpreted the "any" in the clause "to pay off any unamortized balance", as meaning "some, one out of many, an indefinite number" as defined in Black's Law Dictionary (5th Edition, 1979).

The language of the paragraph does not separate the choice of prepayment versus non-prepayment (as interpreted by the appeal court that the option of a prepayment was a "condition precedent" that was not exercised). The plaintiff claims that by this reasoning the "option" or "choice" was exercised and, as a result, title to the alterations and tenant improvements did vest in the Lessee pursuant to the covenant, which, in the following clause, gave the Lessee the right to remove any or all of such alterations and improvements. However, if the Lessee has title or ownership to the tenant improvements, the Lessor is within his rights to refuse ownership of any of the Lessee owned tenant improvements if he desires vacant possession of his leased property at termination so as to prevent waste, inability to rent and loss of value to his real property.

The Restatement 2d. Property Section 12.2(3) does state a duty of the tenant to restore in case of permissible changes. The permissible changes or Tenant Improvements were specifically allowed and provided for by reference or otherwise in the lease contract (Exhibit A) under paragraphs 16, 19A,B and C. There was a permissible change or annexation of the Tenant Improvements to the leased property. The lessee required the change (annexation), paid for it, owned it and could be determined to have made the change (annexation) which was permitted by the lessor. (Restatement 2d. Property Section 12.2(3), Comment on Subsection (3): n and o.)

The scope of the Restatement section 12.2 is covered in the Comment a

> "The emphasis in this section is on changes in the physical condition of the leased property

> made by the tenant. The changes may be the work of someone other than the tenant but attributable to him, in which case they are made by him so far as the rules of this section are concerned."
>
> "Respondent argued that the Restatement does not constitute binding authority." "— nor serves as persuasive authority because the decisional law of this state is contrary to such an application. Canfield v. Security National Bank 1939 13 Cal. 2d l, 30-31."

In Canfield, p.31, the California Appeal Court stated that the Restatement

> "purports to accurately reflect the general common law of the United States, and where there is a conflict, to state the general and better rūle on any given subject."

The Respondent-Defendant in this matter argued that they had never exercised their option regarding the Tenant Improvements, therefore title never transferred to them. Hence they had no duty to remove the Tenant Improvements nor could they be held liable for damages resulting therefrom. The assumption, however, flies in the face of the facts and accepted case law.

Arguendo, as set forth by the Respondent, the general rule of law regarding improvements on leased property is that they become the property of the landlord at the end of the lease, unless there is an express covenant in the lease to the contrary. Wolfen v. Clinical Data, Inc., (1993) 16 Cal App. 4th 171,179.

In the instant matter, the Lease did contain express language to the contrary, but the Respondent argued that they did not exercise the option. *Arguendo,* even if they did not exercise the option pursuant to Paragraph 19C the Respondent still had the duty to restore the premises to its former condition.

To this end Restatement 2d, Property Section 12.2(3) sets forth that in the absence of a lease provision to the contrary, the tenant has a duty to restore the leased property to its former condition, where possible, when requested by the landlord.

As applicable herein, as set forth, the Appellant requested on numerous occasions that the premises be restored to their former condition. Therefore the Respondent, even using their own argument, had a duty to restore the premises, thus making them liable to the Appellant-Plaintiff in the event they didn't. The trial

court's finding otherwise, therefore violates this rule of law and should be reversed.

Respondent's suggestive claim that title to its own improvements would only vest in the County if and when the unamortized balance of the cost of the improvements were prepaid, should fail. It may be inferred from the judgement in this matter that the trial court has concluded that the improvements were not under the ownership liabilities of the Appellant. To accept Respondent's argument, the appeal court would be forced to ignore the essential fact that the County paid valuable consideration to Politi to 'install' the improvements. That the county remains liable for the removal of the improvements does not affect that consideration. Neither that fact, nor that Politi, as a party to this contractual function, had an interest in the funds used to install the improvements, was a basis for calculating into the amount of consideration the future necessity that Politi assume the liabilities attending the County's business decisions. When Politi installed the improvements, by virtue of the consideration paid for such installation, the County assumed all the liability on the improvements. This basic reality cannot be disregarded. The County chose the 'improvement installation, etc.' form of doing business presumably because of the advantages it offered. It is not appropriate for the Respondent now to ask this court to ignore this fact so it will not suffer a disadvantage resulting from the very adoption of this business strategy. For these reasons, the amount of the consideration paid by the County for the performance obligations rendered by Politi was the full amount of the debt, and the full extent of the liability the parties respectively assumed. When the choice is made to conduct business on premises temporarily remodeled according to a business's singular behest, rather than premises already suited to that business purpose, the business must assume both the advantage and the disadvantage of that decision. The significance is in the sufficiency of the consideration which was paid to install the improvements. Where the payment of consideration is adequate, there can be no additional liability imposed because, 'assumption of liabilities is a 'consideration.' Newco Leasing, Inc. v. State Board of Equalization (1983) 143 Cal. App. 3d 120, 126.

Unless the meaning behind the provision of section 19.C. is construed, the provision makes no sense, and would lead to absurd results.

"A contract may be explained by reference to the

> circumstances under which it is made, and the matter to which it relates."
> C.C. 1647.

Here it is undisputed that the county sought, specified and benefitted from the installation of the improvements. At the time the agreement was executed, both parties intended their writing to serve as the exclusive embodiment of their agreement. Politi had no way of obstructing the county from making only those types of improvements of which it could remove, or transfer improvements to other premises for the purpose of deriving furthered benefit. Therefore, this scenario is reasonably plausible. However, it is unreasonable, and implausible to assume Politi contemplated at the moment the contract was integrated that he would be benefitted by the improvements. This unlikelihood is bolstered by the circumstances presented and nominally found by the Trial Court that the area was not germane to office rental, and the improvements were a factor of damages for Appellant. Further, where the terms of an agreement are ambiguous, they

> "should be interpreted most strongly against the party who caused the uncertainty to exist." C.C. 1654.

Here the contract in question was written by the more powerful bargainer (the County) to meet it's own needs and offered to the weaker party (Politi) on a 'take it or leave it' basis. It is therefore, to the reasonable expectations of Politi which should be examined in making a determination whether the provision controls responsibility over the improvements. Reasonableness, equity, fairness, the substantive facts and the law calls out to this Court to review and modify the lower court's opinion on this QUESTION ONE PRESENTED.

II. Review Is Warranted Because The California Trial Court, In Its STATEMENT OF DECISION 1 Abating The Rent During April And May 1994, Was Not Aware Of The Newly Discovered Evidence That The County-Lessee Had Waived It's Jurisdiction Over The Plaintiff-Lessor's Private Property In Favor Of The City, And Then Commenced Committing Fraud In Administrating Paragraph 7 (DAMAGE OR DESTRUCTION) Under The Lease-Contract, And Had Admittedly Used The Premises During April And May 1994, All Of Which Disregards Federal Law Governing Disputes Over A Government Entity's Taking Of Private Property For Public Use

Without Just Compensation. U.S. Const. Amend. Art V.

A. Newly Discovered Evidence Of Defendant's Waiver Of Jurisdiction And Actual Usage Of The Premises Followed By Defendant's Commitment Of Fraud Under Paragraph 7 Of The Lease-Contract To Avoid Paying Rent For April And May 1994.

1. The trial court's resolution of this issue was not reasonable in light of the plaintiff's newly discovered evidence of the County's waiver of its "jurisdiction" and "sole discretion" on April 5, 1994, in favor of the City, and the County's admitted usage of the premises routinely after March 28, 1994 during April and May 1994, and removal of the "Red Tag" ("Unsafe Sign") by June 9, 1994.
2. It is a principle of real property law that use of the common area is considered as "use of the premises."
3. The County's "sole discretion" under paragraph 7 of the lease-contract was unlawfully administered under the "doctrine of waiver and estoppel." It was also administered in an arbitrary, capricious and malicious manner to damage the appellant by abating the rent and claiming a retroactive termination to March 20, 1994, the day of the aftershock. The trial court did not allow a retroactive termination, but did abate the rent for the two months of April and May, 1994 even though, at least since April 8, 1994 the lessor had provided lawfully useable and habitable premises at great repair expense (over $61,000) following the aftershock. (RT303:15-22)
4. From April 8, 1994 to June 9, 1994, the County's posted "Unsafe Sign" next to the City's posted "Safe Sign" became an intentional misrepresentation by the County of the factual and legal status of the premises as to the safety of the premises and with regard to habitation and use of the premises. Under a "principle of real property law", the premises were used by the County in the common area during April and May 1994. Under the County's waiver of their "jurisdiction" and "sole discretion" in the matter, the City's jurisdiction that the premises were safe, habitable and useable were lawful, reasonable and should prevail.

From the foregoing arguments, the Plaintiff claims that the appeal and trial courts abused their discretion and did not follow the law in their respective decisions (Appendix A and B). Moreover, it is well settled that a court will consider an appeal ... where the

new theory "presents a question of law to be applied to undisputed facts in the record." Hoffman-Haag v. Transamerica Ins. Co. (1991) Cal App. 4th 10, 15 [1 Cal. Rptr. 2d805].

Reasonableness, equity, fairness and the law calls out to this Court to review and modify the lower court's opinion on this QUESTION TWO PRESENTED.

III. Review Is Warranted In This Case Because The California Court Of Appeal's Decision To Reduce The Interest Rate On The Damage Award To The Plaintiff From Ten To Seven Percent Conflicts With The Newly Discovered Evidence Which Shows That After The First Term Of Three Years, The Lease-Contract Was Continued For Another Three Year Term From 1986 To 1989 Rather Than As A HOLDOVER In August 1986, Which Confirms The California Trial Court's STATEMENT OF DECISION 5 That A Ten Percent Interest Rate On The Award Of Damages To The Plaintiff Was Proper Pursuant To California Civil Code Section 3289 (b).

A. Newly Discovered Evidence That The Wording Of The Amendments To The Lease-Contract Were In Error And That The Lease-Contract Was Renewed For An Additional Term By August 1986 Pursuant To Paragraph 2B (OPTION TO RENEW) Of The Lease-Contract And Should Allow For A Ten Percent Interest Rate On The Award Of Damages To The Plaintiff Pursuant To California Civil Code Section 3289 (b) As Originally Decided By The Trial Court.

While preparing this petition to the Supreme Court of the United States and in reviewing the reporter's transcript (RT) of the trial proceedings, the plaintiff has newly discovered evidence since the appeal court decision of August 4, 2000 (Appendix A) in the form of sworn testimony that was direct evidence, that the lease was renewed in accordance with paragraph 2B TERM: (Options To Renew) for a period of three years from August 1986 to August 1989. (RT95:19-28, 96,97:1-25). Additional evidence that the lease was renewed in August 1986 derives from the defendant-admitted fact that the rent was mandatorily reduced to account for the amortization of the tenant improvements after the first 3-year term of the lease expired as in paragraph 19C. (RT242:18-26) If the option to renew had not been exercised, then the ensuing monthly rent on a HOLDOVER basis would not have been mandatorily

reduced by $2745 per month and would still be owing in accordance with the lease-contract. (RT242:18-28,243:1-2,296:10-28,297:1-3). There is a logical inference based on the foregoing reasoning that both parties agreed to a renewal of the lease for a second term starting in August 1986 pursuant to paragraph 2B.

Reasonableness, equity, fairness, the substantive facts and the law calls out to this Court to review and modify the lower court's opinion on this QUESTION THREE PRESENTED.

IV. Review Is Warranted Because The California Superior Court's And The Court Of Appeal's Decisions Conflicts With California Court's Precedent And The County Administration Of Their Government Entity-Drafted Lease Contract Termination Procedures Shown Below And Sanctioned By This Court Do Not Meet The Requirements Of The United States Constitution.

A. Equal Protection (U.S. Constitution Amendment Article XIV Section 1).

In this case, the California courts have denied the plaintiff-lessor within its jurisdiction the equal protection of the laws. The Equal Protection Clause demands that the laws be applied so as to have similar results.

Fixtures installed by a tenant are considered real property and become the property of the landlord on termination of the tenancy except where there is an agreement permitting their removal or where they are affixed for the purpose of trade and the removal can be effected without injury to the premises. Beverly Hills v. Albright (1960) 184 Cal App 2d 562,568. If improvements on the land are the property of the tenant, such improvements even if buildings or homes, lose their nature as real property and become the personal property of the tenant. People ex rel. Thain v. Palo Alto (1969) 273 Cal App 2d 400,402.

As a matter of public policy the issue of the TENANT IMPROVEMENTS deserves careful consideration as to a government entity's practice and ability to finance projects and their improvements.

At oral argument in the appeal court, plaintiff cited Dean v. Kuchel (1950) 35 Cal.2d 444 where similar Defendant-drafted language of the lease contract vesting public entity ownership of the tenant improvements has been used in the past by other public entities as lessees in California and the Supreme Court of California has reviewed Dean holding that the contract qualified as a lease.

On CC1951.4 in the Law Revision Commission Comment

(1970 Addition), see, for example, Dean v. Kuchel (1950) 35 Cal. 2d 444 where the lessor constructed the improvement to the specification of the public entity-lessee, leased the property as improved to the public entity, and at the end of the term of the lease all interest in the improvement vested in the public entity. The remedy available under Civil Code Section 1951.2 give the lessor, in effect, security for the repayment of the cost of the improvement in these cases. As Shepardized, the Supreme Court in Dean held that the contract qualified as a lease and conformed to the authorization stated in Gov. Code, Section 13114, that the lessee of state land must erect buildings for the use of the state "during the term thereof" and that the buildings must vest in the state at the end of "said term" where the state, under the lease, is to have the use of the building during the term and own it absolutely at the end of that time if it pays the rent. The high court noted that the rental payments were for month-to-month use and there was no logical distinction between the option to purchase in City of Los Angeles v. Offner 19 Cal. 2d,483 and vesting of title in the state at the end of the lease term in Dean. This plaintiff's point is that the language used in the defendant-County drafted lease contract has been used often by other government entities in California to finance their projects on an installment payment plan.

As a matter of public policy, Dean and Offner, supra, lawfully reenforces the permitted right of government entities in California to finance and arrange the purchase of improvement of real property, that might otherwise be seriously jeopardized if the California Court of Appeal's and the Superior Court's decision in the present case becomes final.

The California Court of Appeal's decision in this case conflicts with the California Court of Appeal's and the California Supreme Court's decisions in Dean and Offner, supra. This conflict supports a review in this Court so as not to deny the plaintiff equal protection of the laws.

The Petitioner believes that the above reasons are compelling pursuant to its Rule 10(c) since the California Court of Appeal (Appendix A) and the County of Los Angeles Superior Court (Appendix B) have decided important questions of federal law that have not been, but should be, settled by this Court.

B. Due Process (U.S. Constitution Amendment Articles V And XIV Section 1).

Plaintiff's newly discovered evidence of reasonable ambiguity in the interpretation of paragraph 19C between the California courts

as to whether the lessee or the lessor owns the TENANT IMPROVEMENTS or plaintiff's newly discovered evidence of reasonable non-ambiguity in the interpretation of paragraphs 19C and 16 when taken together pursuant to California Civil Code Section 1641, indicates that the lessee owns the TENANT IMPROVEMENTS. By deciding that the TENANT IMPROVEMENTS belong to the plaintiff-lessor, the California Court of Appeal has conclusively presumed a question of fact against the plaintiff. However, plaintiff's newly discovered evidence act as rebuttals to the presumption and, therefore, this cannot stand as due process of law.

C. Amendment V and XIV Section 1

Amendment V and XIV Section 1 constitutional rights of the plaintiff were violated in the following issues of this case:

1. Newly discovered evidence of reasonable interpretation of the County-drafted lease-contract as being ambiguous in the decisions between the California Court of Appeal and the Los Angeles Superior Court, when paragraph 19C is interpreted pursuant to C.C.C. 1654 or, as being non-ambiguous when paragraphs 19C and 16 are interpreted in accordance with C.C.C. 1641 and case precedents such as Dean and Offner, supra. It is requested that this Court review this newly discovered evidence to determine if the County should be adjudged as owning the TENANT IMPROVEMENTS installed on the plaintiff's private property and that the County's refusal to remove them at termination then denied vacant possession of the premises to the plaintiff from August 1994 through April 1998, almost four years later, afterwhich it had to be sold at a decreased property value due to a fifty percent vacancy factor when sold in May 1998
2. Newly discovered evidence that the County Superior Court should not have abated the rent during April and May 1994 under a doctrine of laches, estoppel because:

   (2a) The County waived its jurisdiction in favor of the City on April 5, 1994 as to the safety of the leased premises for habitation and usage afterwhich, the City inspected the premises and decreed on April 8 1994 that the premises were safe enough to habitate and use.

   (2b) After the County waived its jurisdiction as in (2a) above, the County committed acts of fraud against the plaintiff and violated County and City statutes and Federal Constitutional law in their

administration of paragraph 7 (DAMAGE OR DESTRUCTION) of the lease-contract during March, April and May 1994.

(2c) The County admitted that it routinely used the common areas of the premises during April and May 1994 to meet clients and personnel and use their vans for transporting them to other facilities.

3. The California Court of Appeal's reduction of the interest rate on the County Superior Court's award of damages from ten to seven percent was made without being cognizant that there was direct testimony during the trial that the County exercised their OPTION TO RENEW the lease as in paragraph 2B of the lease-contract for an additional three year term from August 1986 to August 1989.

Similarly all the QUESTIONS PRESENTED by the petitioner rely on newly discovered evidence or new matters which are also rebuttals to the presumptions of the California Court of Appeal and the County Superior Court and, therefore, those presumptions should not stand as due process of law.

The plaintiff also alleges newly discovered evidence that the Federal government was involved in the indirect use of the premises through their programs and aid to the public through the County mental health clinic and during the earthquake period through the Federal Emergency Management Administration (FEMA), and that the County was claiming compensation from the federal government due to the aftershock that affected their use of the plaintiff's premises. The plaintiff newly alleges both direct California state and indirect U.S. federal use of the premises by the public through their mutual programs without paying just compensation to the plaintiff in reference to the trial court's STATEMENT OF DECISION and the QUESTIONS PRESENTED in this petition.

Under the U.S. Constitution's Fifth Amendment pertaining to the federal government and the Fourteenth Amendment protecting persons from state actions, each person is guaranteed fair procedures and substantive protection of his property from unfair and unjust governmental interference or taking. Amended and supplemental pleadings are allowed and should be permitted by this Court under Federal Rules of Civil Procedure Rule 15.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edward Y. Politi

Date: February 11, 2001

In Pro Per
EDWARD Y. POLITI
18646 Parthenia Street
Northridge, CA 91324 (818) 993-8257

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

EDWARD Y. POLITI,	) B128254
	)
Plaintiff and Appellant,	) (Los Angeles County
	) Super. Ct. No. PC016453)
v.	)
	) COURT OF APPEAL-SECOND
	) DIST.
COUNTY OF LOS ANGELES)	FILED
	) AUG 04 2000
Defendant and Appellant.	) Joseph A. Lane Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles

County. Jerold A. Krieger, Judge. Affirmed in part and reversed and remanded.

Edward Y. Politi, in pro per, for Plaintiff and Appellant.

Lloyd W. Pellman, County Counsel, John F. Krattli, Assistant County Counsel, Francis E. Scott, Principal Deputy County Counsel for Defendant and Respondent.

In this suit for breach of a lease of commercial property and for certain common counts, plaintiff Edward Politi ("plaintiff") appeals from a judgment entered in his favor and against the County of Los Angeles ("defendant"). Defendant has cross-appealed.

Plaintiff challenges the trial court's decision respecting certain tenant improvements made by plaintiff for defendant prior to defendant's occupancy of the premises. He asserts defendant had a duty to remove the improvements, and defendant's failure to remove them resulted in damages to plaintiff because defendant did not effectively terminate the lease but rather held over and deprived plaintiff of the right to possession.

In its cross-appeal, defendant challenges the number of months on which the trial court calculated back rent owed by defendant. Defendant also challenges the rate of prejudgment interest that the trial court applied to plaintiff's damages.

Plaintiff's arguments do not convince this court that defendant had a duty, contractual or otherwise, to remove the improvements and alterations made by plaintiff for defendant. Defendant's arguments do not persuade us that the trial court erred in awarding plaintiff two months rent instead of one month. However, we do find that the court erred in applying a 10% rate of prejudgment interest in this case.

Thus, we will affirm the judgment except as to the award of prejudgment interest; as to that matter we will reverse and remand.

BACKGROUND OF THE CASE

This suit was filed on December 26, 1995. The leased subject property is located in the San Fernando area of the county and was utilized by defendant's Department of Mental Health. According to the complaint, defendant's breaches of its lease commenced March 21, 1994, following the Northridge earthquake.

Defendant filed a general denial on March 20, 1996. On April 2, 1998, defendant served plaintiff with a Code of Civil Procedure section 998 offer to compromise the case for $35,000, which amount would include plaintiff's costs. The offer was rejected.

On May 2, 1998, plaintiff moved for leave to file an amendment to his complaint to allege a cause of action for fraud (intentional/negligent misrepresentation, concealment, and promise made without into to perform) and a prayer for exemplary damages. The motion was denied on June 2 1998. On June 22, 1998, plaintiff filed a renewal motion for leave to file the amendment to his complaint. This renewal motion was denied on July 7, 1998.

The case was tried by the court sitting without a jury. Trial commenced on July 22, 1998, and was held over the course of several days. On July 31, 1998, the trial court issued its tentative decision to which plaintiff and defendant filed challenges. The court issued its statement of decision on September 9, 1998, and the parties filed objections to it.

On October 1, 1998, the trial court issued its minute order ruling on the objections to its statement of decision and also issued

its judgment. By the judgment, plaintiff would recover $24,238, plus interest of $6,623.07, totaling $30,861.07, together with costs to be determined by the court at a later time. On October 6, 1998, defendant served plaintiff with a notice of entry of judgment.

Thereafter, plaintiff noticed his intention to move to have the judgment vacated in part, and filed a cost memo claiming costs of $8,052.98. Plaintiff's motion to vacate was denied. Defendant filed a motion to tax costs. [1]

On December 3, 1998, plaintiff filed his notice of appeal. Defendant filed its notice of cross-appeal on December 30, 1998.

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1 The case history included in the clerk's transcript shows that on January the trial court allowed plaintiff costs of $2,685.04. However, then the trial court, pursuant to a motion by defendant, struck plaintiff's memorandum of costs in its entirety "as the judgment award to Plaintiff of $30,861.07, does not exceed Defendant's 4/2/98 Offer to Compromise in the amount of $35,000.00 per Section 998 of the Code of Civil Procedure." Thereafter, on February 11, 1999, the trial court granted defendant's motion for an order awarding it costs and denied plaintiff's motion for an order striking or taxing defendant's claimed costs.

CONTENTIONS ON APPEAL

Plaintiff asserts the trial court erred when it did not award him damages for defendant's failure to restore the subject premises to their pre-rental condition after defendant terminated the lease. He also challenges the court's determination that if the tenant improvements did belong to defendant, plaintiff failed to mitigate those damages by complying with Civil Code section 1980 et seq., which addresses the disposition of personal property that remains on leased premises after a tenancy terminates. [2]

Defendant contends the trial court erred in determining it owed plaintiff two months back rent rather than one month. Defendant also asserts the court used the wrong rate of interest in calculating the prejudgement interest to which plaintiff is entitled.

Defendant contends the trial court erred in determining it owed plaintiff two months back rent rather than one month. Defendant also asserts the court used the wrong rate of interest in calculating the prejudgement interest to which plaintiff is entitled.

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2 Plaintiff raised additional issues at oral argument. Exercising our discretion, we decline to address these new issues. Since they were not raised in plaintiff's opening brief, defendant did not have the opportunity to respond to them in its appellate brief and to be prepared to address them at oral argument. (Cf. *Durham* v. *City of Los Angeles* (1979) 91 Cal.App.3d 567,571, fn. 2.)

DISCUSSION

1. *The Tenant Improvements Issue*

a. *The Lease and Defendant's Occupancy of the Subject Premises.*

Plaintiff and defendant entered into a lease in May 1983 for defendant's rental of premises owned by plaintiff. The subject lease was for three years. The term of the lease commenced in August 1983. After the three years expired, defendant was permitted to stay on as a holdover tenant. [3] Amendments to the lease were executed in 1991 and 1993 to increase the amount of rent paid by defendant. Ultimately, defendant moved out of the building in 1994 after a March 1994 aftershock of the Northridge earthquake caused extensive damage to the building.

The building was formerly used as retail space for small stores. Prior to defendant's taking possession of the lease space, improvements were made to it which would facilitate defendant's use of the premises. The improvements consisted of such items as

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3 Paragraph 6 of the lease states: "In the event Lessee holds over beyond the end of the term herein provided with the consent express or implied, of the Lessor, such tenancy shall be from month to month only, subject to the terms and conditions of this lease, but shall not be a renewal hereof and the rent to be paid therefore shall be the rate prevailing under the terms of this lease."

interior walls, air conditioning ducts, electrical work (wiring, outlets, lighting), cabinets, movable partitions, extra bathrooms, kitchen facilities and an intercom.

Plaintiff caused the improvements to be made, as part of his obligations under the lease, and initially paid for them himself.

Under the terms of the lease, defendant agreed to reimburse plaintiff for his costs in making the improvements for defendant. The reimbursement was part of the monthly rent paid by defendant; it included interest, and it was amortized over the original three-year term of the lease.

b. *The Dispute Over Removal of the Tenant Improvements*

Paragraph C of paragraph 19 of the lease contains the following provision: "Lessee shall have the continuing option to pay off any unamortized balance of Lessor's financed cost [of the improvements] at any time during the leased term without the payment of any penalty other than the penalty, if any, imposed upon the Lessor by the lender. In the event Lessee exercises this option, the monthly rent shall thereafter be reduced by the sum of ... $34.18 per ... $1,000 of principal amount so paid as a lump sum. In the event Lessee exercises this option, then title to the alterations and improvements shall vest in Lessee; Lessee thereafter at the expiration or prior termination of this lease shall be entitled to remove any or all of such alterations and improvements."

In his opening brief on appeal at pages 4 and 17, plaintiff states that defendant paid the reimbursement payments over the

course of the three-year lease term rather than exercising its option to pay off the debt earlier. Defendant agrees that it did not prepay the reimbursement money but rather paid it off over the full three years of the lease. Thus, the option provision in paragraph 19 C of the lease, by which defendant would have an option (but not an obligation) to remove as many or as few of the improvements as defendant desired, never came into effect because the specified condition precedent of early payoff never occurred. 4

After defendant decided to stop renting the premises in 1994, plaintiff demanded that defendant remove the improvements and alterations and restore the premises to the condition it was in when the lease was signed in 1983. Defendant declined to do so.

In his post-trial brief, plaintiff raised the issue whether defendant was *obligated* to remove the tenant improvements after defendant ceased renting the premises. It was plaintiff's position

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4 Plaintiff argues that what paragraph 19C really means is that the improvements would become the property of defendant after the improvement loan taken out by plaintiff was paid off by defendant at any time during the original three-year period, including being paid off by means of the last monthly rent payment for that period. He disagrees that the subject and purpose of paragraph 19C is defendant's early payoff of that loan. Plaintiff's interpretation of paragraph 19C has no merit the loan was designed to be paid off, by means of the monthly rent payments, by the end of the three-year lease period. Paragraph 19C speaks to paying it off earlier–an "option" to pay off the balance and receive both a reduction in the monthly rent and the right to claim title to the alterations and improvements and remove whichever of them defendant desired.

Moreover even if plaintiff's argument were correct and paying off the improvements at any time during the original three-years would entitle defendant to exercise the paragraph 19C option, the option is clearly worded to permit defendant to remove whichever improvements it wanted, not to *require* defendant to remove them. The option is clearly for the benefit of defendant, not plaintiff.

that defendant does have such an obligation because title to the improvements is in defendant. Plaintiff argued that the terms of the lease give defendant the right to elect to remove any or all of the tenant improvements at any time up to expiration of the lease, and thereafter if plaintiff refused ownership of the improvements, defendant was obliged to remove them. Plaintiff explained that the improvements have no economic value to him since prospective new tenants of the subject premises would be persons seeking space for retail stores, not office space. Plaintiff opined that defendant's failure to remove the improvements "may constitute a holding over which deprives the landlord of his right to possession."

c. *The Trial Court's Decision*

The trial court rejected plaintiff's assertion that defendant's failure to remove the tenant improvements constitutes continued possession of the premises by defendant. The court stated that even if the improvements were defendant's personal property, such property was "clearly abandoned at the time of the termination or at the latest in September 1994 when [defendant] took other items from the property." The court ruled that plaintiff "had an obligation to mitigate his damages by complying with Civil Code section 1980 et seq. which he did not [do]. Therefore, his claim for continued possession by [defendant] is without merit." 5

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5 Civil Code section 1980 et seq. provides an optional procedure for disposing of personal property that remains on rental premises after a tenancy has terminated and the tenant has vacated the premises. (Civ. Code, section 1981.)

d. *Defendant Had No Obligation to Restore the Premises*

When it comes to tenant improvements of rented property, the general rule is that such improvements become the property of the lessor at the end of the lease unless the lease expressly provides. otherwise. (*Wolfen v. Clinical Data, Inc.* (1993) 16 Cal.App.4th 171, 1788-179.) Here, the lease does have an express provision regarding title to the improvements that plaintiff had built for defendant and that defendant ultimately paid for. It is the above quoted paragraph 19C, and it has provision whereby the improvements could become the property of defendant, and if that occurred, defendant would be "entitled" to remove "any or all" of them that is, the choice to remove some or all of the improvements would be at defendant's option. However that possibility never materialized because defendant never paid off its debt for the improvement prior to the expiration of the three-year term. Thus, under the general rule, the improvements belong to plaintiff as the lessor.

Plaintiff asserts that under section 12.2 of the Restatement Second of Property, plaintiff had the right to insist that defendant remove the improvements and restore the premises to its former condition. Section 12.2, subsection (1) states a tenant has the right to make "changes in the physical condition of the leased property which are reasonably necessary in order for the tenant to use the leased property in a manner that is reasonable under all the circumstances" except "to the extent the parties to the lease validly

agree otherwise." Section 12.2, subsection (3) states that except in certain circumstances, a tenant breaches his lease if after making such permissible changes he does not "when requested by the landlord, restore, when restoration is possible, the leased property to its former condition" within the times provided for in the Restatement.

Comment c to subsection (1) states in part that "[t]he assumption is that in the absence of a valid agreement otherwise, the parties intend that the tenant is to be free to make those changes in the leased property that are reasonably necessary to enjoy those uses [of the leased property that are reasonable under all the circumstances]." Comment d to subsection (1) states in part that "[t]he shorter the balance of the [lease] term the more difficult it will be to justify as reasonably necessary substantial alterations and modifications in structures." Comment n to subsection (3) states in part that subsection (3) "is only operative when a permissible change in the leased property has been made by the tenant."

Such comments make it clear that section 12.2 is applicable to changes made by a tenant after taking possession of the property. Thus, had defendant made improvements in addition to those that were agreed upon by the parties and paid for initially by plaintiff, section 12.2 would arguably be applicably to the improvements that the parties in this case negotiated prior to entering into their lease. Just as they made contractual provisions for the installation of, and payment for, those improvements, the parties could have, had they

so desired, made the kind of provision for their removal for which plaintiff now argues.

Nor does paragraph 9C of the lease support plaintiff's assertion that defendant was obligated to remove the improvements which the parties had constructed prior to defendant's occupation of the premises. Paragraph 9C states in part: "Lessee agrees to repair and maintain as necessary the exposed plumbing, window coverings and floor coverings and to return said premises to Lessor in as good condition as when rented." This provision is not similar to section 12.2, subsection (3) of the Restatement Second of Property. The Restatement addresses restoring the premises "to its *former* condition," whereas paragraph 9C of the lease addresses returning the premises "in as *good* condition." (Italics added.) Clearly this lease provision seeks to have defendant take good care of the premises; it talks about the lessee's duty to repair and maintain, as necessary, the exposed plumbing, window coverings and floor coverings; it requires the premises be returned in good condition. The Restatement on the other hand addresses a tenant's undoing the permissible changes made by the tenant if so requested by the landlord.

Nor does the lease provision governing what occurs if all or part of the premises is condemned (paragraph 16), support plaintiff's positions regarding who owned the improvements and the removal of the improvements by defendant. Paragraph 16 states that defendant would be entitled to any portion of a condemnation

award "attributable to Lessee's trade fixtures and improvements." Paragraph 16 further states that "trade fixtures" includes "any tenant improvements installed at the Lessee's request to the extent that Lessee has reimbursed Lessor for such tenant improvements in a lump sum or through amortization included in the rent payments." Paragraph 16 is merely a directive for what rights defendant had in the event it could no longer utilize all of part of the subject premises due to condemnation. It does not have priority over the provision of paragraph 19C of the lease, nor over those in section 12.2 of the Restatement Second of Property.

e. *The Trial Court's Comment Regarding Mitigation of Damages Is Not Dispositive of Plaintiff's Appeal*

As noted above, the trial court rejected plaintiff's assertion that defendant's failure to remove the tenant improvements constitutes continued possession of the premises by defendant, saying that even if the improvements had become defendant's personal property, such property had been abandoned by defendant, and plaintiff "had an obligation to mitigate his damages by complying with Civil Code section 1980 et seq. which he did not [do]." The court concluded plaintiff's claim of continued possession by defendant is without merit.

On appeal, plaintiff asserts that (1) the remedies in section 1980 et seq. are applicable to personal property not fixtures, (2) such remedies are optional, not mandatory, and (3) he did mitigate his losses under section 1951.2. 6 Plaintiff asserts he attempted to re-let the premises and did re-let part of it. Plaintiff concludes that denying him damages because he did not take advantage of section 1980 "was clearly error, and [the judgment] should be reversed."

In determining whether a judgment or order should be affirmed or reversed, we do not base our decision on the trial court's analysis but rather on the validity of the judgment or order. When a ruling or decision is legally correct, it will not be disturbed on appeal just because it was made for the wrong reason. " 'If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' " (*D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) Thus, assuming arguendo the trial court erred in basing its decision on section 1980 remedies, we will nevertheless affirm the court's determination that plaintiff's claim of damages based on an alleged continued possession of the premises by defendant is without merit since we have found that the

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6 Civil Code section 1951.2 addresses damaged recoverable by lessors when a lessee abandons a lease or is terminated by the lessor because of a breach of the lease.

improvements belong to plaintiff and section 12.2 of the Restatement Second does not apply here to require defendant to honor plaintiff's request to remove them.

2. *The Trial Court's Award of Two Month Rent*

The holdover provision in paragraph 6 of the lease states that in the event defendant would holdover when the three-year term of the lease expired, the tenancy would thereafter be a month-to-month tenancy, "subject to the terms and conditions of this lease."

The cancellation provision in paragraph 5 of the lease states that defendant "shall have the right to cancel this lease at or any time after the second year of the lease term by giving sixty (60) days prior written notice." By letter dated May 31, 1994, defendant informed plaintiff that it was terminating its tenancy. [7]

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7 Defendant actually sent two notices to plaintiff to terminate the tenancy. One was sent on May 2, 1994, by regular mail.. The second was sent on May 31, 1994, by certified mail. Initially, defendant contended that under the notice provision of the lease, it was not required to send its termination notice by certified or registered mail. The notice provision states that notices "desired or required to be given by this Lease or by any law now or hereinafter in effect *may* be given by ...registered mail, return receipt requested." (Italics added.)

The trial court ruled that notices respecting termination of a tenancy are governed by Civil Code section 1946, which requires that when such a notice is given by mail it must be by certified or registered mail. Defendant has abandoned its original position and now agrees with the trial court that it is defendant's second notice of termination, not the one sent by regular mail, that is the effective one.

The court awarded plaintiff two months rent (for June and July 1994), totaling $15,738, because it reasoned that under the terms of the lease, a 60-day notice of termination was required "as authorized by the Board of Supervisors when it stated that 'all terms and conditions of the lease remain the same,' except the amount of rent." The quoted language is taken from the two amendments to the lease that increased the monthly rental that defendant was paying for the subject premises. The amendments states in part: "All other terms and conditions of [the lease] not inconsistent herewith shall remain in full force and effect and are hereby ratified and reaffirmed." The court stated that defendant's certified mail notice of May 31, 1994 was effective to terminate the tenancy as of August 1, 1994.

In its cross-appeal, defendant challenges the trial court's determination that plaintiff is entitled to two months rent. Defendant contends that only a 30-day notice of termination was required, not a 60-day notice. Thus, defendant's argument goes, the May 31, 1994 notice that it sent plaintiff was effective to terminate the tenancy as of July 1994 and therefore no July rent was owed to defendant, only the June rent.

Defendant contends that if we find the 60-day notice provision in paragraph 5 is operative, then we transform the month-to-month tenancy into a bi-monthly tenancy and this makes the lease "internally inconsistent." Defendant further argues that while paragraph 6 dictates that the holdover tenancy is subject to the terms

and conditions which do not conflict with specific provisions of the holdover, in order to avoid an absurd result." Additionally, defendant argues that paragraph 5 was "intended to apply to the original term of the lease, not the holdover period." Defendant also argues that Civil Code section 1946 only requires a 30-day notice to terminate the month-to-month tenancy. Defendant concludes that requiring it to pay two months rent "requires that either a portion of the statute be ignored, or that the lease be re-written to change it from a monthly to a bi-monthly holdover." Defendant cites no authority for this analysis, and we disagree with the whole of it.

However, we do agree with defendant that if it is possible, we should interpret the parties' agreements to give meaning to all of the terms therein. Civil Code section 1641 states: "[t]he whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Section 1638 states that "[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."

We find nothing absurd, nor internally inconsistent, about giving effect to both the cancellation provision which provides for a month-to-month tenancy after the three-year term expired. As discussed *infra,* when defendant held over, the effect was to extend the terms of the lease. Thus, the cancellation provision and the holdover provision continued in effect. Taken together, those two provisions dictate that if and when defendant held over after the

three-year lease expired, defendant would become a month-to-month tenant and when defendant sought to terminate that month-to-month tenancy, it would have to give 60 days notice. While section 1946 of the Civil Code requires a 30-day notice unless the parties agree to a shorter one, section 1946 does not state that the parties cannot agree to a longer notice period. Moreover, the holdover provision specifically states that the new tenancy should be pursuant to the terms and conditions of the lease, one of which requires that before the tenancy can be terminated, a 60-day notice must be given. Therefore, the award of two months rent will stand.

3. *The Issue of the Correct Rate of Prejudgment Interest*

When the parties signed their lease in 1983, the legal rate of prejudgment interest was governed by article 15, section 1 of the California Constitution, which specified a rate of 7%. Pursuant to Civil Code section 3289, subdivision (b), the trial court imposed prejudgment interest of 10% on damages awarded to plaintiff. Subdivision (b) of Civil Code section 3289 states: "If a contract *entered into after January 1, 1986*, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach." (Italics added.)

The parties entered into their lease in May 1983, before the 10% interest provision in Civil Code section 3289 became effective. The three-year term of the lease commenced that same year after the improvements were made to the premises. The three-year term of the lease expired in August 1986, after the 10% interest provision

in Civil Code section 3289 became effective. Thereafter, the parties made amendments to the lease in 1991 and 1993, whereby they raised the monthly rent payable by defendant. No other changes were made by these two amendments. As noted above, after the original three-year lease term expired, defendant went into a month-to-month tenancy, pursuant to the holdover provision of the lease. The holdover provision specifically states that the month-to-month tenancy will be subject to the terms and conditions of the leae, "but shall not be a renewal hereof."

In awarding 10% interest to plaintiff under section 3289, the trial court stated: "As the Board of Supervisors acted to continue the tenancy after January 1, 1986, such action effectively entered into a new contract under the same terms and condition son the subsequent date. Hence, the rate of interest at 10% is appropriate under Civil Code Section 3289 (b)." By its reference to the Board of Supervisors acting to continue the tenancy, the trial court apparently meant defendant's agreeing to amend the parties' agreement to increase the monthly rental on the premises.

In its cross-appeal, defendant argues the prejudgment interest awarded to plaintiff should have been calculated at 7% instead of 10% because according to the terms of the lease itself, defendant's holding over constitutes an *extension* of the original lease and not a *renewal* of it, and therefore Civil Code section 3289 could not apply to the holding over because that statute did not become effective until June 23, 1986, which was after the parties entered

into the lease.

The terms "renewal" and "extension" are terms of art. In *Morello* v. *Metzenbaum* (1944) 25 Cal.2d 494, 500, the court explained that a renewal of a contract is thought of as a separate contract, whereby a new right or obligation is substituted for another of the same nature and a new instrument is executed. Thus, where the lessee has an option of renewing a lease, the giving of a new lease is contemplated. In contrast, where the lessee has an option of extending the term of a new lease, the lessee holds over for the additional period. In *Burroughs* v. *Ben's Auto Park, Inc.* (1945) 27 Cal.2d449, 454, the court stated that "[a} 'renewal' creates a new and distinct tenancy [citations], whereas an 'extension' is in effect the 'stretching or spreading out' of a former term [citations]." in *Smith* v. *Arthur D. Little, Inc.* (1969) 276 Cal.App.2d 391, 399, the court stated that "the modern trend is to ascertain the intention of the parties by a consideration of the entire document or sets of documents, the surrounding circumstances, and the conduct of the parties."

In the instant case, in reviewing the parties' conduct and their documents we find there was no renewal of the lease when defendant held over. The contract entered into by the parties in May of 1983 is entitled "Lease And Agreement," and it first four words are "This Lease And Agreement." The agreement never stopped being the parties' declaration of their respective positions vis-a-vis their lessor-lessee relationship. It governed their

relationship when that relationship was for a term of years, ant it continued to govern that relationship when it changed to a month-to-month tenancy. It remained their daily governing agreement until defendant cancelled the relationship in May of 1994. The holding over, and the change in the term of the tenancy from a term-of-years tenancy to a month-to-month tenancy, were all pursuant to the original agreement itself, just as the May 31, 1994 notice of cancellation and the monthly payment of the rent were pursuant to the agreement. The agreement provided defendant with different options as to remaining in the premises after the original three years expired. It provided that when that three-year term was over, defendant had the option to renew its lease for two separate and consecutive three-year term, under the same terms and conditions of the original three-year term except for an adjustment of rent. It also provided that if defendant wished to holdover, it could do so on a month-to-month basis, and this holding over *would not constitute a renewal of the lease* but would be subject to the terms and conditions of the agreement. Thereafter, in 1991 and 1993, the parties signed the two documents affecting the 1983 agreement, both of which identified themselves as amendments to the agreement, and both of which state that all of the other terms and conditions in the 1983 agreement would remain in force and effect unless inconsistent with the amendments. Therefore, the parties continued to agree that defendant's continued holding over would not be a renewal of the lease. Under these explicit directives in the

parties' written instruments, plus the fact that no new lease or rental agreement was ever executed, we do not find a renewal here. Therefore, the operative provision for calculating pre-judgment interest is not Civil Code section 3289 but rather article 15, section 1 of the Constitution, and therefore, the judgment must be amended to reflect the correct amount of prejudgment interest – 7%.

DISPOSITION

The judgment is affirmed except insofar as it awards plaintiff prejudgment interest at the rate of ten percent; as to that award the judgment is reversed. The cause is remanded to the trial court for further proceedings on the issue of prejudgment interest consistent with the views expressed herein. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CROSKEY, Acting P.J

We Concur:

KITCHING, J.

ALDRICH, J.

FILED
LOS ANGELES SUPERIOR CT
SEP 09 1998 BK
JOHN A. CLARKE, CLERK
S/ B. KAPLAN
BY B. KAPLAN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDWARD Y. POLITI,	)	No. PC016453
	)	
Plaintiff,	)	STATEMENT OF
	)	DECISION
vs.	)	
	)	
COUNTY OF LOS ANGELES,	)	
	)	
Defendant.	)	
	)	

The court has read and considered the Specifications of Controverted Issues and the objections thereto filed by the parties. The court has reviewed the testimony and exhibits in this matter and issues the following Statement of Decision:

1. Award of two months' rent in the amount of $15,738. The parties to do not controvert that the amount of two months' rent is properly calculated, rather, they contend on defendant's part that it should only be one month, and on plaintiff's part that it should be many more months. As stated by the court in its tentative decision, the two months were calculated on the basis that 60 days notice was

required pursuant to the terms of the lease, as authorized by the Board of Supervisors when it stated that "all terms and conditions of the lease remain the same," except the amount of rent.

The question then presented is when was notice given. The cases cited by the defendant with regard to notice concern exercise of an option, they do not relate to termination of a tenancy. Notice of termination of a tenancy are guided by Civil Code section 1946 which requires personal service or certified or registered mail. The termination was effective upon placing it in the mailbox, regardless of when it was received. The notice being sent on May 31, the termination was not effective until August 1, 1994. At the time the termination notice was sent, the property was approved for occupancy. While the defendant had paid for the property for a short period of time that was not covered, this amount is applied to the period from May 18 to June 1, 1994. Hence, the two months rent was owing.

Plaintiff contends that the court should not have excluded periods prior to the notice of termination. However, paragraph 7 of the lease specifically provides that the rent is abated during the period of repair for that portion of the premises that could not be used. As the property was not able to be used until such time as the City and County certified it as habitable again, the plaintiff is not entitled to rents for that period.

2. The $6000 for excessive expenses for earthquake repairs. During the period after the earthquake, the County led

plaintiff to believe that if he repaired the premises they would resume occupancy. The evidence was clear that the plaintiff incurred approximately $60,000 to repair the premises. The court has taken judicial notice that during the period after the earthquake, contractors and other in the building professions were in great demand and many charged exorbitant fees above their normal fees for such services. Had the County not acted as they did, plaintiff could have delayed the construction work until costs were back to normal. The court finds that 10% of $6000 was additional cost to the plaintiff caused by the actions of the County.

3. Failure to set off $857.77

Even if these were proper, there was no showing that they were done at plaintiff's request, therefore they were gratuitous.

4. The property and improvements issue

Plaintiff claims under various legal theories that the improvements to the property became the personal property of the County and the County should have removed them. He then contends that as they did not, that constitutes continued possession of the property by the County. Even assuming for the sake of argument that it did become the personal property of the County, it was clearly abandoned at the time of the termination or at the latest in September 1994 when the County took other items from the property. The plaintiff had an obligation to mitigate his damages by complying with Civil Code section 1980 et seq which he did not. Therefore, his claim for continued possession by the County is

without merit.

5. Interest

The issue of interest has been raised by the plaintiff. It is clear that plaintiff is entitled to interest in the amount specified to September 1, 1998. The rate of interest is a simple 10% interest. This should be calculated as follows:

Interest from June 1, 1994 to Sept. 1, 1998 on $7,869 equals $3344.32

Interest from July 1, 1994 to Sept. 1, 1998 on $7,869 equals $3,278.75

Interest from July l, 1994 to Sept. 1, 1998 on $6,000 equals $2,500

Interest from Sept 1, 1994 to Sept. 1 1998 on $2,500 equals $1,000

Therefore, the total award is $24,238 plus interest of $10,123.07

6. Costs

Because the award including interest is $34,361.07 and nears the amount of the CCP section 998 offer, and that offer included a waiver of costs, the amount of costs incurred by the plaintiff must be added to the total to determine if the judgment exceeds the offer. This cannot be done until a formal cost bill is submitted pursuant to Rule 870 and any motion to tax costs is hear and determined.

The clerk shall enter judgment in favor of plaintiff and against defendant in the amount of $24,238 plus interest of $10,123.07 plus

cost. Said costs are subject to being vacated depending on later findings pursuant to CCP section 998.

The above constitutes the Statement of Decision pursuant to Code of Civil Procedure section 632 and CRC Rule 232.

Dated: Sep 09 1998

S/_____

JEROLD A. KRIEGER

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

09/09/98) Dept. NVB
Honorable Jerold A. Krieger Judge) B. Kaplan Dep. Clerk
Honorable Judge Pro Tem) Electronic Recording Mon.
NONE Deputy Sheriff) NONE Reporter
)

8:30 am PC016453
EDWARD Y. POLITI
VS.
THE COUNTY OF LOS ANGELES, ET A

NATURE OF PROCEEDINGS:
STATEMENT OF DECISION RE: COURT TRIAL

The court issues his statement of decision.
Judgment is in favor of the plaintiff, Edward Y. Politi and against the defendant, County of Los Angeles, in the amount of $24,238.00, plus interest in the amount of $10,123.07, for a total of $34,361.07, plus costs.
The court orders counsel for defendant to prepare the judgement and submit it to the court by September 23, 1998.
The parties are to pick-up their respective exhibits from the court clerk within 5 days after the judgment has been signed.
A true copy of this minute order and the Statement of Decision are sent this date, via U.S. Mail, as addressed below:
Edward Y. Politi
18646 Parthenia Street
Northridge, California 91324

Francis E. Scott
DEPUTY COUNTY COUNSEL
500 W. Temple Street
Los Angeles, CA 90012

MINUTES ENTERED
09/09/98
COUNTY CLERK

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 3

August 23, 2000

Edward Y. Politi
v.
County of Los Angeles

B128254
Los Angeles County No. PC016453

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

Court of Appeal, Second Appellate District, Division Three
No. B11128254
S0091489

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EDWARD Y. POLITI, Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES, Defendant and Appellant.

Petition for review DENIED.

SUPREME COURT
FILED
NOV 15 2000
FREDERICK K. OHLRICH Clerk
Deputy

GEORGE

Chief Justice

APPENDIX E: PROVISIONS OF LAW (CALIFORNIA, COUNTY AND CITY OF LOS ANGELES)

(Pertinent Parts Pursuant to this Court's Rule 14.1(f))

CONSTITUTION OF THE STATE OF CALIFORNIA

1879

ARTICLE XV

USURY

Section
1. Interest rates.
2,3. Repeated.

1. Interest rates

Section 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand, shall be 7 percent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest:

THE CALIFORNIA CIVIL CODE SECTIONS

Section 1641.

The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Section 1644.

The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Section 1654.

In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

Section1951.2. Termination of lease: remedy of lessor

(a) Except as otherwise provided in Section 1951.4, if a lessee of real property breached the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;

(3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided, and

(4) Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

(b) The "worth at the time of award" of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph (3) of subdivision (a) is computed by discounting such amount a the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

(c) The lessor may recover damages under paragraph (3) of subdivision (a) only if:

(1) The lease provides that the damages he may recover include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the lease, exceeds the amount of such rental loss for the same period that the lessee proves could be reasonably avoided; or

(2) The lessor relet the property prior to the time of award and proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, but the recovery of damages under this paragraph is subject to any limitations specified in the lease.

(d) Efforts by the lessor to mitigate the damages caused by the lessee's breach of the lease do not waive the lessor's right to recover damages under this section.

Legislative Committee Comment -- Assembly
1970 Addition

Section 1951.2 states the measure of damages when the lessee breaches the lease and abandons the property or when his right to possession is terminated by the lessor because of a breach of the lease. As used in this section, "rent" includes "charges equivalent to rent." See Section 1951.

Nothing in section 1951.2 affects the rules of law that determine when the lessor may terminate the lessee's right to possession. See generally 2 WITKIN, SUMMARY OF CALIFORNIA LAW Real Property sections 276-278 (1960). Thus, for example, the lessor's right to terminate the lessee's right to possession may be waived under certain circumstances. *Id.* At section 278. Likewise, nothing in this section affects any right the lessee may have to an offset against the damages otherwise recoverable under the section. For example, where the lessee has a claim based on the failure of the lessor to perform all of his obligations under the lease, this section does not affect the right of the lessee to have the amount he is entitled to recover from the lessor on such claim offset against the damages otherwise recoverable under the section.

Section 1951.4. Remedy provided by lease; provisions

(a) The remedy described in this section is available only if the lease provides for this remedy.

(b) Even though a lessee of real property has breached his lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all his rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, if the lease permits the lessee to do any of the following:

(1) Sublet the property, assign his interest in the lease, or both.

(2) Sublet the property, assign his interest in the lease, or both, subject to standards or conditions, and the lessor does not require compliance with any unreasonable standard for, nor any unreasonable condition on, such subletting or assignment.

(3) Sublet the property, assign his interest in the lease, or both, with the consent of the lessor, and the lease provides that such consent shall not unreasonably be withheld.

(c) For the purposes of subdivision (b), the following do not constitute a termination of the lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver upon initiative of the lessor to protect the lessor's interest under the lease.
(Added by Stat. 1970. C. 89. P. 105, section 3, operative July 1, 1971.)

Law Revision Commission Comment
1970 Addition

Even though the lessee has breached the lease and abandoned the

property, this section permits the lessor to continue to collect the rent as it becomes due under the lease rather than to recover damages based primarily on the loss of future rent under Section 1951.2 This remedy is available only if the lease so provides and contains a provision permitting the lessee to mitigate the damages by subletting or assigning his interest in the property. The lease may give the lessee unlimited discretion in choosing a subtenant or assignee. See subdivision (b)(1). However, generally the lease will impose standards for or conditions on such subletting or assignment or require the consent of the lessor. See subdivision (b)92), (3). In the latter case, the lessor may not require compliance with an unreasonable standard or condition nor unreasonably withhold his consent. Occasionally, a standard or condition, although reasonable at the time it was included in the lease, is unreasonable under circumstances existing at the time of subletting or assignment. In such a situation, the lessor may resort to the remedy provided by Section 1951.4 if he does not require compliance with the now unreasonable standard or condition. Common factors that my be considered in determining whether standards or conditions on subletting or assignment are reasonable include: the credit rating of the new tenant; the similarity of the proposed use to the previous use; the nature or character of the new tenant – the use may be similar, but the quality of the tenant quite different; the requirements of the new tenant for services furnished by the lessor; the impact of the new tenant on common facilities.

The right to continue to collect the rent as it becomes due terminates when the lessor evicts the lessee; in such case, the damages are computed under Section 1951.2. The availability of a remedy under this section does not preclude the lessor from terminating the right of a defaulting lessee to possession of the property and then utilizing the remedy provided by Section 1951.2. However, nothing in this section affect the rules of law that determine when the lessor my terminate the lessee's right to possession. See generally 2 WITKIN, SUMMARY OF CALIFORNIA LAW *Real Property* sections 276-278 (1960). Thus, for example, the lessor's right to terminate the lessee's right to possession may be waived under certain circumstances. *Id.*, at

section 278.

Where the lease complies with Section 1951.4, the lessor may recover the rent as it becomes due under the terms of the lease and at the same time has no obligation to retake possession and relet the property in the event the lessee abandons the property. This allocation of the burden of minimizing the loss is most useful where the lessor does not have the desire, facilities, or ability to manage the property and to acquire a suitable tenant and for this reason desires to avoid the burden that Section 1951.2 places on the lessor to mitigate the damages by reletting the property.

The allocation of the duty to minimize damages under Section 1951.4 is important. It permits arrangements for financing the purchase or improvement of real property that might otherwise be seriously jeopardized if the lessor's only right upon breach of the lease and abandonment of the property were the right to recover damages under Section 1951.2. For example, because lease could be enforced under former law, leases were utilized by public entities to finance the construction of public improvements. The lessor constructed the improvement to the specification of the public entity-lessee, leased the property as improved to the public entity, and at the end of the term of the lease all interest in the property and the improvement vested in the public entity. See, *e.g.*, Dean v. Kuchel, 35 Cal.2d 444, 218 P.2d 521 (1950). Similarly, a lessor could, in reliance on the lessee's rental obligation under a long-term lease, construct an improvement to the specifications of the lessee for the use of the lessee during the lease term. The remedy available under Section 1951.4 retains the substance of the former law and gives the lessor, in effect, security for the repayment of the cost of the improvement in these cases.

Chapter 5

DISPOSITION OF PERSONAL PROPERTY REMAINING ON PREMISES AT TERMINATION OF TENANCY

Section
1980. Definitions.
1981. Optional procedure; construction of chapter.
1982. Lost property; disposition.
1983. Notice to former tenant and owner of property; description; delivery.
1984. Notice to former tenant; form; contents.
1985. Notice to owner; form.
1986. Storage of property; place; reasonable care.
1987. Release of property; payment of storage and expenses.
1988. Sale of property; notice; publication; proceeds.
1989. Liability of landlord.
1990. Costs of storage; assessment.
1991. Notice of belief of abandonment to lessee; notice to former tenant; combined notices.

Chapter 5 was added by Stats. 1974, c. 331, p. 653, Section 2.

Library References

Recommendations relating to landlord-
Tenant relations, 11 Cal.L.Rev.Comm.
Reports 963 (1973).

Section 1980. Definitions

As used in this chapter:

(a) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his agent or successor in interest.

(b) "Owner" means any person other that the landlord who has

any right, title, or interest in personal property.

(c) "Premises" includes any common areas associated therewith.

(d) "Reasonable belief" means the actual knowledge or belief a prudent person would have without making an investigation (including any investigation of public records) except that, where the landlord has specific information indicating that such an investigation would more probably then not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(e) "Tenant" includes any paying guest, lessee, or sublessee of any premises for hire.

(Added by Stats.1974, c. 331, p. 653, section 2.)

Section 1981. Optional procedure; construction of chapter

(a) This chapter provides an optional procedure for the disposition of personal property which remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant.

(b) This chapter does not apply where Section 1862.5, 2080.8, 2080.9, or 2081 to 2081.6, inclusive, applies. This chapter does not apply to property which exists for the purpose of providing utility services and is owned by a public utility, whether or not such property is actually in operation to provide such utility services.

(c) This chapter does not apply to any manufactured home as defined in Section 18007 of the Health and Safety Code, any mobilehome, as defined in Section 18008 of the Health and Safety Code, or to any commercial coach, as defined in Section 18001.8 of the Health and Safety Code, including attachments th4ereto or contents thereof, whether or not the manufactured home, mobilehome, or commercial coach is subject to registration under the Health and Safety Code.

(d) If the requirements of this chapter are not satisfied, nothing in this chapter affects the rights and liabilities of the landlord, former tenant, or any other person.

(Added by Stats.19974, c. 331, p. 654, Section 2. Amended by Stats.1983, c. 1124, Section 5, operative Jan. 1, 1984.)

Law Revision Commission Comment
1974 Addition

Section 1981 makes clear that use of the procedures provided by this chapter is optional. A landlord may, but need not, dispose of personal property left on the premises in the manner provided herein. However, Section 1989 provides limits on the landlord's liability if these procedures are followed.

Section 3289. Rate of interest chargeable after breach of contract

(a) Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

(b) If a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach.

For the purposes of this subdivision, the term contract shall not include a note secured by a deed of trust on real property.

(Enacted 1872. Amended by Stats.1985, c. 663, Section 1; Stats.1986, c. 176, Section 1, eff. June 23, 1986.)

Official
California Government Code Classification

CHAPTER 1089

An act to add Section 13114 to the Government Code, relating to the power of the Director of Finance to lease state property.
(Approved by Governor July 21, 1949. Filed with Secretary of State July 22, 1949.) In effect October 1, 1949

The people of the State of California do enact as follows:

SECTION 1. Section 13114 is hereby added to the Government
Code, to read as follows:

13113. Notwithstanding any other provision of law, the Director of Finance, with the consent of any state agency having

jurisdiction thereof, is hereby authorized and empowered to let to any person, firm or corporation, for a term not to exceed forty years any real property which belongs to the State, regardless of whether such property was acquired under any law specifying that such property was to be devoted to any particular use or purpose. Any instrument by which such property is let as aforesaid shall require the lessee therein to construct on the demised premises a building or buildings for the use of the Sate during the term thereof, shall provide that title to such building shall vest in the State at the expiration of said term and shall contain such other terms and conditions as the Director of Finance may deem to be in the best interests of the State.

This section shall remain in effect until the ninety-first day after final adjournment of the 1951 Regular Session of the Legislature.

Official Compilation

TITLE 26
of
Los Angeles County Code

As Amended by Ordinance No. 90-0045
Effective April 29, 1990

Edited and Proofread by Building and Safety Division,
Department of Public Works, County of Los Angeles

Scope

Sec. 103. The provisions of this code shall apply to the construction, alteration, moving, demolition, repair, use of any building or structure and grading within the unincorporated territory of the County of Los Angeles and to such work or use by the County of Los Angeles in any incorporated city not exercising jurisdiction over such work or use.

LOS ANGELES MUNICIPAL BUILDING CODES INVOLVED

CHAPTER IX

BUILDING REGULATIONS

ARTICLE I

BUILDING
[BUILDING CODE]

(Article I, Chapter IX, Amended by Ordinance No. 170,953, Eff. 3/17/96. Oper. 1//1/96, incorporating by reference portions of the 1994 Edition of the Uniform Building Code and the 1995 Edition of the California Building Code.)

DIVISION 1
ADMINISTRATION

91.101.1. Title. This article shall be known as the "Los Angeles Building Code", a portion of the Los Angeles Municipal Code, and wherever the work "code" is used in this article it shall mean the "Los Angeles Building Code".

91.101.2. Purpose. The purpose of this article is to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures erected or to be erected within the city, and by regulating certain grading operations within the city.

RESTATEMENT OF THE LAW, SECOND PROPERTY, VOL. 1, INVOLVED

12.2 Tenants'S Rights and Obligations As to Changes in the Physical Condition of the Leased Property

*****

(3) Duty of tenant to restore in case of permissible changes – Except to the extent the parties to a lease validly agree otherwise, there is a breach of the tenant's obligation if he make permissible changes in the leased property and does not, when requested by the landlord, restore, where restoration is possible, the leased property to its former condition within the time provided in section 12.3 or within a reasonable time after the request to restore, whichever is later, unless such changes result from reasonable wear and tear, or unless it would be unreasonable to require the restoration in the light of the probable future use of the leased property; and for this breach, the landlord may:

(a) recover damages; and

(b) in an appropriate case, obtain equitable relief.

DECLARATION AND AFFIDAVIT IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI BY EDWARD Y. POLITI

I, Edward Y. Politi, declare as follows:

1. I am the plaintiff acting in Pro Per.
2. I have personal knowledge of the matters set forth in the attached petition

and if called as a witness, I would and could testify competently regarding these matters.

I. The Underlying Litigation As To Whether The TENANT IMPROVEMENTS (TRADE FIXTURES) Were Reasonably Owned By The Defendant-Lessee And Their Obligation To Remove Them And Restore The Premisses At Termination Of The Lease.

A. Newly Discovered Evidence Of Ambiguity In the Reasonable Interpretation Of The Contract Between The California Courts As To Whether The Lessee Or The Lessor Owned The TENANT IMPROVEMENTS.

A.1. The specification of ground for the newly discovered evidence of the facts in the ambiguous decisions as between the appeal and trial courts in their interpretation of paragraph 19C of the contract and as to whether the lessee or the lessor owned the TENANT IMPROVEMENTS, is supported by this plaintiff's declaration having personal knowledge of the facts, showing:

(a) When the evidence was first discovered ----
In deference to the appeal court opinion that became available after it was filed on August 4, 2000 (Appendix A), the new facts dealing with ambiguity were not discovered by the plaintiff until he was preparing a Petition For A Writ of Certiorari in the U.S. Supreme Court in January 2001 and which has a filing deadline of February 15, 2001.

(b) Why it could not with reasonable diligence have been produced at trial ----
As in (a) above, the appeal court opinion, upon which the ambiguity relies, was given two years after the trial on August 4, 2000 (Appendix A).

(c) What attempts were made to discover and present the

evidence at trial ----

Up to the present, plaintiff believed that he had reasonably interpreted paragraph 19C and the underlying facts as indicating that the defendant owned the TENANT IMPROVEMENTS and he has presented underlying facts at trial (e.g. the monthly rent was reduced when the loan was amortized indicating that the option was exercised as required in paragraph 19C). Therefore, the plaintiff did not attempt to discover or present an ambiguous interpretation at trial.

(d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and ----

The newly discovered evidence as to a reasonable ~~interpretation of ambiguity between the trial court and~~ the appeal court is not oral testimony.

(e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available ----

The newly discovered evidence of ambiguity in the interpretation of paragraph 19C (Exhibit A) is documentary evidence as between the appeal court opinion (Appendix A) and the trial court STATEMENT OF DECISION 4 (Appendix B), as to whether the plaintiff or the defendant owned the TENANT IMPROVEMENTS, and also lies in the plaintiff's PETITION FOR A WRIT OF CERTIORARI under QUESTIONS PRESENTED 1 and STATEMENT OF THE CASE I.A.

B. Newly Discovered Evidence Of Non-Ambiguity In The Reasonable Interpretation Of The Contract's Paragraphs 19C And 16 By The Plaintiff As To Who Owned The TENANT IMPROVEMENTS.

B.1. The "specification" of ground for the newly discovered evidence of the facts of a non-ambiguous interpretation of paragraph 19C of the contract as to whether the lessee or the lessor owner the TENANT IMPROVEMENTS, is supported by this plaintiff's declaration having personal knowledge of the

facts, showing:

(a) When the evidence was first discovered ----
The new facts dealing with non-ambiguity were not discovered by the plaintiff until he was preparing a Petition For A Writ of Certiorari to the U.S. Supreme Court in January 2001 which has a filing deadline of February 15, 2001.

(b) Why it could not with reasonable diligence have been produced at trial ----
The appeal court decision of August 4, 2000 interpreted the contract's paragraph 19C (Exhibit A) as determining that the plaintiff-lessor owned the TENANT IMPROVEMENTS because the County-lessee did not prepay the loan amortization and, therefore, title to the TENANT IMPROVEMENTS did not vest in the lessee. The plaintiff then sought new evidence to overcome the appeal court's interpretation that occurred two years after the trial .

(c) What attempts were made to discover and present the evidence at trial ----
The plaintiff attempted to present the evidence at hand of a reasonable interpretation of paragraph 19C as non-ambiguous on the ownership issue and the trial court, in argument, reasonably conceded that the TENANT IMPROVEMENTS were owned by the defendant as their personal property and clearly abandoned them at termination, but that the plaintiff had no merit due to his failure to mitigate the damages pursuant to California Civil Code Section 1980 et seq.

(d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and ----
The evidence as to the plaintiff's and the trial court's reasonable non-ambiguous interpretation of paragraph 19C (Exhibit A) of the contract is not oral.

(e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are

not then available ----

The newly discovered evidence of non-ambiguity in the interpretation of paragraphs 19C and 16 (Exhibit A) is documentary evidence as to whether the plaintiff or the defendant owned the TENANT IMPROVEMENTS, and lies in the plaintiff's PETITION FOR A WRIT OF CERTIORARI under QUESTIONS PRESENTED 1. and STATEMENT OF THE CASE I.B.

II. The Underlying Litigation As To The Defendant's Obligation To Pay Rent For April And May 1994 And Their "Fraud Under Contract" To Avoid Payment.

A.1. The specification of ground for the newly discovered evidence of the facts of County's expressed waiver of jurisdiction as to the safety of the leased premises in favor of the City, by a letter to the plaintiff dated April 5, 1994, which should nullify the trial court's STATEMENT OF DECISION 1, wherein the rent ordinarily payable to the plaintiff was abated for the months of April and May 1994. The County's waiver of jurisdiction as to the safety of the leased premises was concealed by their acts of fraud under paragraph 7 of the contract to avoid paying rent, is supported by this plaintiff's declaration having personal knowledge of the facts, showing:

(a) When the evidence was first discovered ----

The fact of the County's waiver of jurisdiction as to the safety of the leased premises was discovered as a "waiver" when the plaintiff filed a Petition For Rehearing on August 18, 2000 which was denied by the appeal court on August 23, 2000 (Appendix C).

(b) Why it could not with reasonable diligence have been produced at trial ----

Fraud under paragraph 7 of the contract was being alleged during the trial which tended to conceal the waiver of jurisdiction as to the safety of the leased premises in favor of the City.

(c) What attempts were made to discover and present the evidence at trial ----

The plaintiff attempted to present the evidence at that time in the context of fraud under paragraph 7 of the contract (Exhibit A).

(d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify; and ----

The evidence on waiver is not oral testimony.

(e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available ----

The newly discovered evidence of waiver of jurisdiction as to the safety of the leased premises in favor of the City is contained in a letter dated April 5, 1994 (Exhibit 9A), from a County administrator to the plaintiff.

III. The Underlying Litigation As To Whether The Lease-Contract Was Renewed In August 1986 Allowing For A Ten Percent Interest Rate On The Trial Court's Damage Award To The Plaintiff.

A. Newly Discovered Evidence That The Lease-Contract Was Renewed Pursuant To Paragraph 2B (OPTION TO RENEW) Of The Lease-Contract And Should Allow For A Ten Percent Interest Rate On The Award Of Damages To The Plaintiff Pursuant To California Civil Code Section 3289 (b) As Originally Decided By The Trial Court.

A.1. The specification of ground for the newly discovered evidence of the facts pertaining to the renewal of the lease pursuant to paragraph 2B of the contract (Exhibit A), is supported by this plaintiff's declaration having personal knowledge of the facts, showing:

(a) When the evidence was first discovered ----

The fact of renewal of the lease pursuant to paragraph 2B (TERM: Option to Renew) was newly discovered by the plaintiff while preparing his Petition For Certiorari to the U.S. Supreme Court in January 2001 which has a filing deadline of February 15, 2001.

(b) Why it could not with reasonable diligence have been produced at trial ----

Plaintiff testified to it at trial and the trial court awarded ten percent interest pursuant to California Civil Code 3289(b). However, erroneous lease

amendments were introduced by the defendant to the appeal court that reversed the award to seven percent interest. The error in the lease amendments as well as the fact that the rent had been reduced when the option to renew was exercised in August 1986 pursuant to paragraph 2B of the lease-contract, was newly discovered by the plaintiff when he was preparing his Petition For A Writ Of Certiorari to the U.S. Supreme Court in January 2001 which was due to be filed by February 15, 2001.

(c) What attempts were made to discover and present the evidence at trial ----
See answer to III A.1(b) above.

(d) If the evidence is oral testimony, the nature of the testimony and the willingness of the witness to so testify: and ----
See answer to III A.1.(b) above, and the plaintiff, as witness, is willing to so testify.

(e) If the evidence is documentary, the documents or duly authenticated copies thereof, or satisfactory evidence of their contents where the documents are not then available ----
See answer to III A.1(b) above. As explained, some of the evidence is documentary (e.g. Exhibit A, paragraphs 2B and 19C).

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on ~~February~~ 4 March 22, 2001. EYP

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